United States Court of Appeals

for the Second Circuit

APPENDIX

No. 76-4088

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

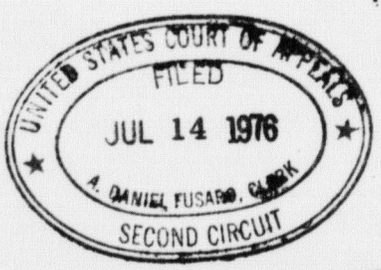
v.

ST. LUKE'S HOSPITAL CENTER & DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL-CIO,

Respondents.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

B
P/S

ABS DUPLICATORS, INC.–1732 Eye Street, N.W.–Washington, D.C.–298-5537

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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

ST. LUKE'S HOSPITAL CENTER

and

ST. LUKE'S PROFESSIONAL DIETICIANS

and Case 2-CA-13501

DISTRICT 1199, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES
A DIVISION OF RWDSU, AFL-CIO

Party to the Contract

DISTRICT 1199, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES
A DIVISION OF RWDSU, AFL-CIO

and Case 2-CB-5709

ST. LUKE'S PROFESSIONAL DIETICIANS

and

ST. LUKE'S HOSPITAL CENTER

Party to the Contract

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: St. Luke's Hospital Center &
District 1199, National Union of
Hospital & Health Care Employees,
A Division of RWDSU, AFL-CIO

Case Nos.: 2-CA-13501 & 2-CB-5709

DATE	
10.24.74	Charge filed in 2-CA-13501
10.24.74	Charge filed in 2-CB-5709
4. 3.75	Amended Charge filed in 2-CA-13501
4. 3.75	Amended Charge filed in 2-CB-5709
5. 8.75	Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated
5.19.75	Order Extending Time to Answer, dated
5.20.75	Respondent Employer's Answer, received
6. 2.75	Respondent Union's Answer, received
6.23.75	Hearing opened
6.24.75	Hearing closed
9. 3.75	Administrative Law Judge's Decision issued
10. 6.75	General Counsel's Exceptions to the Administrative Law Judge's Decision, received
10.20.75	Charging Party's Exceptions to the Administrative Law Judge's Decision, received
1. 2.76	Decision and Order issued by the National Labor Relations Board

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[dated September 3, 1975]

* * * * *

DECISION

Statement of the Case

HERBERT SILBERMAN, Administrative Law Judge: A charge having been filed in each of the above-numbered cases by the law firm of Fellner and Rovins on October 25, 1974, and an amended charge having been filed in each case by St. Luke's Professional Dieticians on April 3, 1975, an order consolidating the separate cases and a complaint therein was issued on May 8, 1975. The complaint, as

amended at the hearing, alleges that St. Luke's Hospital Center, herein called the Hospital or the Employer, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, and that District 1199, National Union of Hospital and Health Care Employees A Division of RWDSU, AFL-CIO, herein called the Union, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) of the Act. In substance, the complaint alleges that the Hospital and the Union have been maintaining in effect and enforcing an unlawful collective-bargaining agreement in that the contract covers both professional and technical employees although certain classifications of professional employees were not first afforded an opportunity to vote for inclusion in the unit with nonprofessional employees. The Hospital filed an answer, dated May 19, 1975, which denies that it has engaged in the alleged unfair labor practices and asserts as an affirmative defense that the actions complained of "were taken in accordance with applicable law in effect at the time and cannot be retroactively declared invalid." The Union filed an answer, dated May 30, 1975, which denies that it has engaged in the alleged unfair labor practices and asserts as affirmative defenses: first, that the unit described in the complained of collective-bargaining agreement was established pursuant to a valid certification issued by the New York State Labor Relations Board at a time when that body had jurisdiction, and the National Labor Relations Board has no authority retroactively to declare invalid "actions taken in accordance with applicable law in effect when the actions complained of were taken"; second, the professional employees who are the subject of the complaint in this case constitute a minority of the professional workers in the bargaining unit covered by the complained-of contract; third, as a matter of comity, the Board should recognize the certification issued by the New York State Labor Relations Board; and fourth, the Board should defer its jurisdiction

to an arbitration proceeding instituted under the provisions of the contract which will determine the identical issues raised by the instant complaint.

A hearing in these proceedings was held on June 23 and 24, 1975, in New York, New York. Posthearing briefs were filed with the Administrative Law Judge by General Counsel and the Union.

Upon the entire record in the case, I make the following:

Findings of Fact

I. Jurisdiction

St. Luke's Hospital Center, a nonprofit New York corporation, is engaged in the operation of a general care hospital in New York, New York. During the calendar year 1974, the Hospital had gross revenues in excess of $1 million and purchased supplies and materials valued in excess of $50,000 from firms located outside the State of New York which were shipped directly to the Hospital through channels of interstate commerce. Respondents admit, and I find, that the Hospital is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. The Labor Organization Involved

District 1199, National Union of Hospital and Health Care Employees A Division of RSDSU, AFL-CIO, formerly known as the Guild of Professional, Technical & Office Employees, Local 1199, Drug & Hospital Union, AFL-CIO, is a labor organization within the meaning of the Act.

III. The Alleged Unfair Labor Practices

The issue in this case is whether the Hospital and the Union since August 24, 1974, when the nonprofit hospital amendments to the National Labor Relations Act (Public Law 93-360) became effective, have violated the Act by continuing to impose the terms of their subsisting collective-bargaining agreement, including its union-security clause, upon several classifications of professional employees. The most recent contract between the Hospital and

the Union, executed on July 26, 1974, covers a unit of technical and professional employees as described in an amended certification issued by the New York State Labor Relations Board, herein referred to as the NYSLRB, on May 22, 1974. The NYSLRB had denied several professional employee groups the opportunity to vote upon whether they wished to be included in a unit with nonprofessional employees. Thus, the question is whether the nonprofit hospital amendments to the Act invalidate a collective-bargaining agreement which was lawful when made only because the unit certified by the NYSLRB, at a time when it had jurisdiction, did not give professional employees a self-determination election. Such self-determination election would have been required pursuant to Section 9(b)(1) had the National Labor Relations Board then had jurisdiction.

The relevant facts, which are not in dispute, are, as follows:

April 16, 1973: The Union filed with the NYSLRB in Case SE–4666 a petition for an election in a proposed unit of the Hospital's professional and technical employees.

May 1, 1973: Professional Dietician Employees of St. Luke's Hospital Center filed with the NYSLRB in Case SE–46726 a petition for an election in a unit of the Hospital's therapeutic, clinical, and research dieticians. (The parties in the instant case stipulated that these dieticians are professional employees within the meaning of the Act.)

May 8, 1973: Agreement for Consent Election, subject to the approval of the NYSLRB, was entered into by the Hospital, the Union, and the Professional Dietician Employees of St. Luke's Hospital Center in the proceeding filed by the Dieticians which would give the dieticians an opportunity to vote as to whether they desired a separate bargaining unit or desired to be included in a broader unit of technical and professional employees.

May 24, 1973: Memorandum and Direction of Election was issued by NYSLRB in Case SE—46665 (36 SLRB 33), directing an election in the unit of technical and professional employees requested by the Union. However, separate petitions had been filed seeking to represent in separate units various classifications of employees included in the requested unit of technical and professional employees. These petitions sought units of: research dieticians, therapeutic dieticians, and clinical dieticians (Case SE—46726); pharmacists and pharmacist-interns (Case SE—46727); physical therapists (Case SE—46764); dental hygientists (Case SE— 46781); and electroencephalographic technologists (Case SE—46575). The NYSLRB further directed that

> Those employees in classifications for which separate petitions are pending and undetermined may vote, but their ballots will be challenged. If any of them are subsequently found to be professionals and they subsequently vote, in a self-determination election, in favor of a separate bargaining unit, they will then be excluded from the unit of technical employees. This procedure affords all employees an early opportunity to participate in an election, as agreed upon and requested by the parties, but reserves the issues affecting those employees in the challenged classifications pending future determination of their unit placement.

June 7, 1973: An election was conducted in the unit described in Case SE—46665. The tally of ballots showed that of approximately 334 eligible voters 151 ballots were cast for the Union, 61 ballots were cast against the Union, 1 ballot was declared void, and 71 ballots were challenged.

June 21, 1973: A certification of representative issued by NYSLRB (Decision 13615), certifying the Union as the exclusive representative of the Hospital's technical and professional employees, but excluding from the unit,

among others, the classifications of employees with respect to whom separate representation petitions had been filed.

August 1, 1973: The Hospital and the Union entered into a collective-bargaining agreement covering the technical and professional unit "as per the S.L.R.B. Case No. SE–46665. Decision No. 13615, dated June 21, 1973."

May 22, 1974: The NYSLRB issued a Decision, Order and Amended Certification of Representative (37 SLRB No. 68), which, insofar as is relevant to this proceeding, ordered that the certification of representative in Case SE–46665 be amended so as to include in the appropriate bargaining unit "the research dieticians, therapeutic dieticians, clinical dieticians, pharmacists, pharmacist-intern, dental hygienists and research assistants." (There are the classifications which the complaint alleges are unlawfully covered by the subsisting contract between the Hospital and the Union.)

By an exchange of letters between the Union and the Hospital, respectively dated June 7 and July 19, 1974, the above-listed classifications of professional employees were added to the parties' collective-bargaining agreement.

July 26, 1974: The Hospital and the Union entered into an agreement which succeeded the August 1, 1973, agreement and which covered the classifications of employees included in the unit certified by the NYSLRB as amended on May 22, 1974.

October 16, 1974: The Union directed a letter to the Hospital calling attention to the fact that a number of dieticians had not signed checkoff authorizations and benefit and pension forms pursuant to the union-security clause of the parties' collective-bargaining agreement.

October 18, 1974: The Hospital caused advice to be furnished to its dieticians that under the union-security clause of the applicable collective-bargaining agreement they were required to become members of the Union and that if they did not comply with such requirement within a stated period of time they would be terminated.

March 25, 1975: A letter was sent by the attorneys for the Union to the attorneys for the Hospital reaffirming the Union's demand that the dieticians named in the letter be discharged for their failure to comply with the union-security provision of the parties' collective-bargaining agreement. (None of the persons named in the letter had been discharged as of the date of the hearing.)

May 17, 1975: Arbitrator Morris P. Glushien issued an Opinion and Order retaining jurisdiction in an arbitration proceeding instituted by the Union against the Hospital to enforce the union-security provisions of the parties' agreement with respect to a recalcitrant group of 18 dieticians employed by the Hospital.

Attached hereto as an appendix is a list showing the classifications of professional employees covered by the parties' contract and the number of employees in each classification.

I have read carefully and considered the oral argument presented at the hearing, the cogent arguments advanced in the Union's brief, the thoughtful brief submitted on behalf of General Counsel, the preliminary discussion of the question which appears in the NLRB General Counsel's "Monthly Report on Health Care Institution Cases," dated March 27, 1975, pages 10 through 13, and the Opinion issued by Arbitrator Morris P. Glushien. The pertinent arguments with respect to the issues in this case have been thoroughly and ably presented. I have nothing to add which does not already appear in the oral argument or in the written instruments referred to. It is my opinion, and I find, that Public Law 93—360 does not invalidate the agreements entered into between the Union and the Hospital, which were lawful when made, and that Respondents have not violated the Act by maintaining in effect and enforcing the provisions of their agreement since the effective date of Public Law 93—360.

Conclusion of Law

Respondent have not engaged in the violations of the Act alleged in the complaint.

Upon the foregoing findings of fact, conclusion of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[1]

The complaint herein is dismissed in its entirety.

Dated, at Washington, D.C. September 3, 1975

/s/ Herbert Silberman
Herbert Silberman
Administrative Law Judge

[1] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

APPENDIX

Position No.	Title	No. of Employees
115	Graduate Pharamacist	4
136	Staff Pharmacist	10
172	Social Worker	34
173	Senior Social Worker	2
167	Occupational Therapist	5
160	Speech Therapist/Audio 1	0
161	Speech Therapist/Audio 2	0
163	Language Pathologist	1
150	Speech Therapist/Audio Senior 1	0
151	Speech Therapist/Audio Senior 2	4
317	Research Technician A	4
318	Research Technician B	0
945	Dental Hygienist	0
185	Senior Occupational Therapist	1
346	Research Technologist A	4
347	Research Technologist B	9
183	Clinic Dietician	2
184	Therapeutic Dietician	13
101	Research Dietician	1
175	Senior Research Therapist	0

[dated January 2, 1976]

* * * * *

DECISION AND ORDER

On September 3, 1975, Administrative Law Judge Herbert Silberman issued the attached Decision in this proceeding dismissing the complaint. Thereafter, the Acting General Counsel, hereinafter called General Counsel and Charging Parties[1] filed exceptions and supporting briefs and District 1199 resubmitted its brief to the Administrative Law Judge in support of the Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

St. Luke's Hospital Center, the Employer, is a private, nonprofit hospital. On August 25, 1974, Public Law 93—360 became effective, eliminating the exemption from coverage of the National Labor Relations Act with respect to such hospitals. Essential elements of this case took place prior to the amendment's effective date. The facts are not in dispute. In April 1973, District 1199 (Union) filed a petition (SE—46665) with the New York State Labor Relations Board (NYSLRB) seeking an election in a unit of technical employees and professional employees[2] employed by the Employer, among

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[1] Charges were filed in the above-captioned cases by the law firm of Fellner & Rovins, New York City, on October 24, 1974, and amended charges were filed by St. Luke's Professional Dieticians on April 3, 1975. The cases were consolidated for the purposes of issuing a consolidated complaint conducting a hearing.

[2] It is undisputed that these employees are professional employees within the meaning of Sec. 2(12) of our Act and that the unit as certified by New York State combines them with nonprofessional employees.

which, as the parties in this proceeding agree, were several classifications of professional employees, such as social workers, pharmacists, therapists, dental hygientists, and dieticians.

In May 1973, a group known as the Professional Dietician Employees of St. Luke's Hospital Center filed a petition with the NYSLRB (SE–46726) for an election in a separate unit of dieticians after which St. Luke's Hospital Center, District 1199, and the Professional Dieticians entered into a consent agreement, subject to the approval of the state board, for an election providing the dieticians with an opportunity to vote on whether or not they desired to be represented in a separate unit and whether they wished to be represented by District 1199, or the Professional Dieticians of St. Luke's Hospital Center, or neither. Subsequently, the NYSLRB rejected the consent agreement and directed an election in the unit initially petitioned for by District 1199 which combined both technical and professional employees. In view of the petition for a separate unit of dieticians, the state board ordered that the ballots of those sought to be separately represented be challenged pending determination of their professional status. The election was conducted on June 7, 1973, and resulted in District 1199 being certified as the collective-bargaining representative for the unit found appropriate, excluding dieticians. Soon thereafter, the Employer and District 1199 executed a bargaining agreement covering the employees in the certified unit. Subsequent to the election at which the dieticians cast challenged ballots, the NYSLRB determined that under New York statute voting of professional employees separately depends on whether a labor organization seeks to represent them in a separate unit. Having made that determination, the NYSLRB found that the organization requesting such an election for the dieticians was not a labor organization as defined by New York statute, and that consequently, even if the dieticians were professionals,

a question there left unresolved, no basis for a separate vote existed under New York law.[3] Based on that conclusion, the state board dismissed the petition filed by the Professional Dieticians of St. Luke's Hospital and amended its previous certification of District 1199 to include the dieticians.[4] The Employer and District 1199 on July 26, 1974, on the day the President signed the Federal amendment, amended their bargaining agreement to cover these employees. Since that time the dieticians have refused to become members of the Union or to pay initiation fees or dues as required by the union-security clause of the collective-bargaining agreement, while all other employees in the unit as covered by the agreement have complied. In October 1974, the Union insisted that the Employer enforce the union-security provision of their agreement. Thereafter, the Employer notified the dieticians that they were required to become members of the Union within a stated period of time or terminate their employment. In March 1975, the Union demanded, by letter to the Employer, that the dieticians be discharged for their failure to comply with the union-security provision.[5]

The General Counsel alleges that the actions taken by the Employer and the Union to enforce the union-security provision violate Section 8(a)(3) and 8(b)(2) and (1)(A) of the Act. His allegations are bottomed on the health

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[3] Other organizations filed petitions seeking separate units of pharmacists and pharmacist-interns (SE—46727) and dental hygienists (SE—46781). Votes case by these employees were also challenged pursuant to the NYSLRB direction of election pending resolution of their professional status. Following the election the state board found that the organizations which filed these petitions were not labor organizations as defined by New York statute and these employees were accordingly included with the dieticians in the amended certification of the unit represented by District 1199 in July 1974.

[4] The challenged ballots were not opened because they would not have affected the outcome of the election numerically.

[5] Thereafter, at the Union's request, the matter was referred to arbitration. The arbitrator issued an award on October 14, 1975, finding that the Employer, upon the Union's request, must enforce the union-security provision of the contract. We do not, however, consider this binding upon us, the application of Sec. 9(b)(1) being solely within the Board's purview.

care amendments effective August 25, 1974, which provided for this Board's jurisdiction over private, nonprofit hospitals such as the Employer. The General Counsel contends that it is well established that it is unlawful to cause or attempt to cause the discharge of employees because of nonmembership, absent the existence of a valid contract between a union and an employer containing a union-security clause meeting the requirements set forth in the proviso to Section 8(a)(3). Thus, the validity of a union-security clause is conditioned on the union being the representative of the employees in "the appropriate collective bargaining unit covered by such agreement when made." It is the General Counsel's contention that Section 9(b)(1) of the Act requires that professional employees have an opportunity to vote on whether or not they desire to be included in a unit with nonprofessional employees and that the New York State Board's action in not providing such an election renders the state certified unit inappropriate under our statute. Thus, the General Counsel asserts that the recent attempt of the Respondent Union and Employer to enforce the union-security clause violates our statute.

The Administrative Law Judge found no basis on which to conclude that the alleged violations had occurred, finding that the recent health care amendments did not invalidate a collective-bargaining agreement which was lawful when made and that action taken to maintain and enforce its provisions were not violative of the Act. In the circumstances of this case, we disagree with the Administrative Law Judge's conclusions that the enforcement of the union-security clause by threatening to discharge the dieticians in these specific circumstances was lawful. In the past, we have considered the mandate of Section 9(b)(1) as precluding this Board from certifying a unit combined of professional and nonprofessional employees without first affording the professional employees the opportunity to decide whether they desire on that

basis such a unit configuration.[6] Inasmuch as Section 9(b)(1) does not find such units to be unlawful *per se*, we have construed that section as not invalidating as inappropriate an historically established contract unit combining professional and nonprofessional employees where the unit was voluntarily created by the parties and maintained by them for many years without challenge.[7]

In this case, however, we are faced with the situation where, for the several months since July 1974, when the Employer and the Union pursuant to a state board's amended certification extended the coverage of their bargaining agreement to include dieticians, these professional employees have not complied with the existing union-security clause, having refused to assume membership in the Union or to pay union initiation fees or dues. It is quite evident that no stable bargaining relationship involving these dieticians has resulted which would be endangered, and that the continuing refusal to comply with the union-security provision reflects the dieticians' lack of consent to inclusion in the mixed professional and nonprofessional unit. When Congress enacted Section 9(b)(1) its mandate was that recognition should be afforded to the "special problems" of professional persons who "have a great community of interest in maintaining certain standards."[8]

It is well established that the Board will recognize the validity of state-conducted elections and certifications where the election procedure was free of irregularities and reflected the true desires of employees. *Cornell University*,

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6 *Retail Clerks Local Union No. 324, Retail Clerks International Association, AFL-CIO (Vincent Drugs No. 3, Inc.)*, 144 NLRB 1247 (1963).

7 *Id.*, at 1254.

8 S. Rept. 105, 80th Cong., 1st sess. 11; I Leg. Hist. 417, Labor Management Relations Act, 1947.

183 NLRB 329, 334 (1970). The circumstances attending the certification of those dieticians are unusual, if not irregular. Though the ballots were impounded, they were ultimately not counted because under State law separate representation required a bargaining agent that qualified as a labor organization in the State. The St. Luke's Professional Dieticians was found not to qualify. The State Board's failure to proceed to a tally of the challenged votes of dieticians and certify only if a majority had voted to be represented in a unit including nonprofessionals was repugnant to Section 9(b)(1) of the Act we administer. Although the amended state certification occurred, in effect, between the signing of the amendment to our law and its effective date the violations of our Act that we are asked to remedy have occurred after the effective date of the new legislation giving the Board jurisdiction over this type of hospital. In the circumstances, including the absence of meaningful bargaining for the dieticians, we shall find the 8(b)(2) and (1)(A) and the 8(a)(3) violations. Our action here is analogous to that recently taken in *Brookhaven Memorial Hospital,* 214 NLRB No. 159 (1974), where this Board, considering the unit there sought by the hospital as currently in the process of being "established," did not defer to an on-going state election proceeding that could have resulted in the certification of a mixed unit without affording a separate vote to professional.

Conclusions of Law

1. St. Luke's Hospital Center is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District 1199, National Union of Hospital and Health Care Employees a Division of RWDSU, AFL—CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to discharge dieticians for their failure to comply with the union-security provision of the collective-bargaining agreement in the

circumstances of this case, the Employer, St. Luke's Hospital Center, has violated Section 8(a)(3) and (1) of the Act.

4. By attempting to cause the Employer, St. Luke's Hospital Center to discharge the dieticians as aforesaid, District 1199 has violated Section 8(b)(2) and (1)(A) of the Act.

5. The aforesaid unfair labor practice are unfair labor practices affecting commerce within the meaning of Section 2(6) and of the Act.

Remedy

Having found that the Employer and District 1199 have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom take certain affirmative action designated to effectuate the policies of the Act.

Upon the foregoing undisputed facts, conclusions of law, and the entire record, we hereby issue the following:

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Employer, St. Luke's Hospital Center, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to discharge dieticians employed by it because of the failure of these employees to comply with the union-security clause of the collective-bargaining agreement between St. Luke's Hospital Center and District 1199.

(b) Maintaining or enforcing or attempting to maintain or enforce in any manner the union-security clause of the aforementioned collective-bargaining agreement with respect to dieticians of St. Luke's Hospital Center who have refused to comply with said clause.

(c) In any other manner interfering with, restraining, or coercing these aforementioned employees in the exercise of the rights guaranteed them in Sections 7 and 9(b)(1) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw, rescind, and give no further effect to any notice, memorandum, letter, or statement which can be reasonably construed as maintaining or enforcing, or attempting to maintain or enforce, the union-security clause with respect to dieticians who have refused to comply therewith.

(b) Post at the St. Luke's Hospital Center, New York, New York, copies of the attached notice marked "Appendix A" and "Appendix B."[9] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by representatives of each Respondent, as the case may be, shall be posted by Respondent Employer immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to insure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for Region 2 signed copies of the attached notice marked "Appendix A" for posting by Respondent District 1199. Copies of said notice, on forms provided by said Regional Director, shall, after being signed by a representative of Respondent Employer be returned forthwith to the Regional Director for such posting.

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[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondent Employer has taken to comply herewith.

B. Respondent District 1199, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause, St. Luke's Hospital Center to threaten to discharge, or in any other way to discriminate against dieticians who have refused to comply with the aforementioned union-security clause.

(b) Maintaining or enforcing, or attempting to maintain or enforce, in any manner the union-security clause of the aforementioned collective-bargaining agreement with respect to dieticians of St. Luke's Hospital Center who have refused to comply with such clause.

(c) In any other manner interfering with, restraining, or coercing these aforementioned employees in the exercise of their rights guaranteed them in Section 7 and 9(b)(1) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw, rescind, and give no further effect to any notice, memorandum, letter, or statement which can be reasonably construed as maintaining or enforcing, or attempting to maintain or enforce, the union-security clause with respect to dieticians who have refused to comply therewith.

(b) Post at its business office and usual membership meeting places copies of the attached notices marked "Appendix A" and "Appendix B."[10] Copies of said notices on forms provided by the Regional Director for Region 2, after being duly signed by representatives of each Respondent, as

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[10] See fn. 9, *supra.*

the case may be, posted by Respondent District 1199 immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are usually posted. Reasonable steps shall be taken by Respondent District 1199 to insure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for Region 2 signed copies of the attached notice marked "Appendix B," for posting by Respondent Employer. Copies of said notice, on forms provided by said Regional Director, shall, after being signed by a representative of Respondent District 1199, be returned forthwith to the Regional Director for such posting.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order what steps Respondent District 1199 has taken to comply herewith.

Dated, Washington, D.C. Jan. 2, 1975

John H. Fanning, Member

Howard Jenkins, Jr., Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, and has ordered us to post this notice and we intend to carry out the Order of the Board.

WE WILL NOT threaten to discharge dieticians who have refused to comply with the union-security provision of the collective-bargaining contract between us and District 1199, National Union of Hospital and Health Care Employees, a Division of RWDSU, AFL—CIO, in view of the impact of Section 9(b)(1) of the National Labor Relations Act in the circumstances of this case.

WE WILL NOT in any other manner maintain or enforce, or attempt to maintain or enforce, the union-security provision of the aforementioned collective-bargaining agreement with respect to the dieticians who have refused to comply with that provision.

WE WILL NOT in any other manner interfere with, restrain, or coerce these dieticians in the exercise of their rights guaranteed them under Section 7 and 9(b)(1) of the National Labor Relations Act.

WE WILL withdraw and rescind and give no effect to any and all notices, memoranda, or letters from us which state, or can be reasonably construed to state, that the dieticians who have refused to comply with the union-security

clause of the contract between us must comply therewith or terminate their employment.

ST. LUKE'S HOSPITAL CENTER
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor, Federal Building, 26 Federal Plaza, New York City, New York 10007, Telephone 212—264—0360.

APPENDIX B

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, and has ordered us to post this notice and we intend to carry out the Order of the Board.

WE WILL NOT cause or attempt to cause St. Luke's Hospital Center to discharge dieticians who have refused to comply with the union-security provision of the collective-bargaining agreement between us and St. Luke's Hospital Center, in view of the impact of Section 9(b)(1) of the National Labor Relations Act in the circumstances of this case.

WE WILL NOT in any other manner maintain or enforce, or attempt to maintain or enforce, the union-security provision of the aforementioned collective-bargaining agreement with respect to the dieticians who have refused to comply with that provision.

WE WILL NOT in any other manner interfere with, restrain, or coerce these dieticians in the exercise of their rights guaranteed them under Section 7 and 9(b)(1) of the National Labor Relations Act.

WE WILL withdraw, rescind, and give no effect to any and all statements, notices, memoranda, or letters from us which demand or can be reasonably construed to demand that the dieticians who have refused to comply with aforementioned union-security provision must comply therewith or terminate their employment or be discharged.

DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL—CIO

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor, Federal Building, 26 Federal Plaza, New York City, New York 10007, Telephone 212—264—0306.

BEST COPY AVAILABLE

GENERAL COUNSEL'S EXHIBIT 1(a)

FORM NLRB-501 (2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 2-CP-1235-1

Date Filed 10-24-74

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: St. Luke's Hospital Center

b. Number of Workers Employed: Approximately 4,000

c. Address of Establishment (Street and number, city, State, and ZIP code): 114th Street and Amsterdam Ave., New York, N.Y. 10025

d. Employer Representative to Contact: Richard DeCristoford

e. Phone No.: 870-6000

f. Type of Establishment (Factory, mine, wholesaler, etc.): Hospital

g. Identify Principal Product or Service: Health Care

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 8(a)(1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

During the six month period prior to the date of the filing of this charge, the above named employer has interferred, restrained and coerced Therapeutic Dieticians, who are professional employees under the Act, and has discriminated in regard to tenure of employment and the terms and conditions of the employment of said employees to encourage membership in District 1199, National Union of Hospital and Health Care Employees, a Division of RWDSU/AFL-CIO, a labor organization by (1) requiring said employees to become members of said labor organization under the terms of an agreement between it and said labor organization covering a unit of professional and non-professional employees in which said emoloyees have been included without giving said employees the opportunity to determine by majority vote whether they desired to be included in said unit and (2) threatening to deny said employees coverage under certain of said employer's insurance programs to which they are entitled and has coerced said employees to participate in insurance programs provided under said agreement between it and said labor organization.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): Fellner and Rovins

4a. Address (Street and number, city, State, and ZIP code): 230 Park Avenue, New York, New York 10017

4b. Telephone No.: 686-4500

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization):

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Fellner and Rovins

By _____ A.Member of the Firm
(Signature of representative or person filing charge) (Title, if any)

Carl A. Schwarz, Jr.

Address 230 Park Avenue, New York, N.Y. 686-4500 October 23, 1974
(Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 769-871

GENERAL COUNSEL'S
EXHIBIT 1(b)

AFFIDAVIT OF SERVICE

St. Luke's Hospital Center
114th Street & Amsterdam Ave.
New York, N.Y. 10025

October 25, 1974

St. Luke's Hospital Center

2-CA-13501

District 1199, Nat'l. Un. of Hospital
& Health Care Employees
310 West 43rd Street
New York, N.Y. 10036

I certify that I served the above-referred charge this day by post paid registered mail on the addressee above together with a transmittal letter of which this is a true copy.

[signature]

Subscribed and sworn to before me this 25th day of October 1974

[signature]

Designated Agent

GENERAL COUNSEL'S EXHIBIT 1(c)

Form NLRB-508 (12-65)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
District 1199, National Union of Hospital and Health Care Employees	Jesse Olson Executive Vice Pres.	582-1890

d. Address (Street, city, State and ZIP code)

310 West 43rd Street, New York, New York 10036

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1) and (2) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

During the six month period prior to the date of the filing of this charge the above named labor organization or its agents has restrained and coerced therapeutic dieticians, who are professional employees, employed by St. Luke's Hospital Center in the exercise of their rights guaranteed in section 7 of the Act and has caused or attempted to cause said employer in violation of sub-section 3(a)(3) of the Act by requiring said therapeutic dieticians to become members of said labor organization as a condition of continued employment when it does not represent an appropriate bargaining unit in which said professional employees have been included since said professional employees have not been given the opportunity to determine by majority vote to be included in said unit which consists of professional and non-professional employees.

3. Name of Employer
St. Luke's Hospital Center

4. Location of Plant Involved (Street, city, State and ZIP code)
114th Street and Amsterdam Avenue, New York, N.Y. 10025

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Hospital	Health Care	approximately 4,000

8. Full Name of Party Filing Charge
Fellner and Rovins

9. Address of Party Filing Charge (Street, city, State and ZIP code)
230 Park Avenue, New York, N.Y. 10017

10. Telephone No.
686-4500

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Fellner and Rovins
By _____ A Member of the Firm
(Signature of representative or person making charge) (Title or office, if any)

Carl A. Schwarz, Jr.
Address 230 Park Avenue, New York, N.Y. 686-4500 October 23, 1974
(Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 863-431

GENERAL COUNSEL'S
EXHIBIT 1(d)

AFFIDAVIT OF SERVICE

District 1199, Nat'l. Union of Hospital
& Health Care Employees
310 West 43rd Street
New York, N.Y. 10036

October 25, 1974
Dist. 1199, Nat'l. Un. of Hosp. &
Health Care Employees
(St. Luke's Hosp. Center)

2-CB-5709

St. Luke's Hospital Center
114th Street & Amsterdam Avenue
New York, N.Y. 10025

I certify that I served the above-referred charge this day by post paid registered mail on the addressee above together with a transmittal letter of which this is a true copy.

Subscribed and sworn to before me this 25th day of October 1974

Designated Agent

BEST COPY AVAILABLE

GENERAL COUNSEL'S EXHIBIT 1(e)

(2-67) Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST EMPLOYER

(AB-5709)

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 2-CA-13501

Date Filed 4/3/75

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: St. Luke's Hospital Center

b. Number of Workers Employed: Approximately 4,000

c. Address of Establishment (Street and number, city, State, and ZIP code): 114th Street and Amsterdam Ave., New York, N.Y. 10025

d. Employer Representative to Contact: Richard DeCristoford

e. Phone No.: 870-6000

f. Type of Establishment (Factory, mine, wholesaler, etc.): Hospital

g. Identify Principal Product or Service: Health Care

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 8(a)(1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

During the six month period prior to the date of the filing of this charge, the above named employer has interferred, restrained and coerced Therapeutic Dieticians, who are professional employees under the Act, and has discriminated ~~in regard to tenure~~ of employment and the terms and conditions of the employment of said employees to encourage membership in District 1199, National Union of Hospital and Health Care Employees, a Division of RWDSU/AFL-CIO, a labor organization by (1) requiring said employees to become members of said labor organization under the terms of an agreement between it and said labor organization covering a unit of professional and non-professional employees in which said employees have been included without giving said employees the opportunity to determine by majority vote whether they desired to be included in said unit and (2) threatening to deny said employees coverage under certain of said employer's insurance programs to which they are entitled and has coerced said employees to participate in insurance programs provided under said agreement between it and said labor organization.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

St. Luke's Professional Dieticians

4a. Address (Street and number, city, State, and ZIP code): 230 Park Avenue, New York, New York 10017

4b. Telephone No.: 686-4500

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ Attorney for Charging Party
(Signature of representative or person filing charge) (Title, if any)

Carl A. Schwarz, Jr.

Address 230 Park Avenue, New York, N.Y. 686-4500 April 2, 1975
(Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 769-071

GENERAL COUNSEL'S
EXHIBIT 1(f)

Affidavit of Service

April 3, 1975

St. Luke's Hospital Center
114th Street & Amsterdam Ave.
New York, N.Y. 10025

St. Luke's Hospital Center

2-CA-13581

District 1199, Nat'l. Un. of Hosp.
& Health Care Employees, RWDSU
310 West 43rd Street
New York, N.Y. 10036

I certify that I served the above-referred charge this day by post paid registered mail on the addressee above together with a transmittal letter of which this is a true copy.

Subscribed and sworn to before me this 3rd day of April 19 75

Designated Agent

GENERAL COUNSEL'S EXHIBIT 1(g)

(12-65)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE
Case No. 2-CB-5709
Date Filed 4/3/75

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
District 1199, National Union of Hospital and Health Care Employees	Jesse Olson Executive Vice Pres.	582-1890

d. Address (Street, city, State and ZIP code)
310 West 43rd Street, New York, New York 10036

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1) and (2) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

During the six month period prior to the date of the filing of this charge the above named labor organization or its agents has restrained and coerced therapeutic dieticians, who are professional employees, employed by St. Luke's Hospital Center in the exercise of their rights guaranteed in section 7 of the Act and has caused or attempted to cause said employer in violation of sub-section 3(a)(3) of the Act by requiring said therapeutic dieticians to become members of said labor organization as a condition of continued employment when it does not represent an appropriate bargaining unit in which said professional employees have been included since said professional employees have not been given the opportunity to determine by majority vote to be included in said unit which consists of professional and non-professional employees.

3. Name of Employer
St. Luke's Hospital Center

4. Location of Plant Involved (Street, city, State and ZIP code)
114th Street and Amsterdam Avenue, New York, N.Y. 10025

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Hospital	Health Care	approximately 4,000

8. Full Name of Party Filing Charge
St. Luke's Professional Dieticians

9. Address of Party Filing Charge (Street, city, State and ZIP code)	10. Telephone No.
230 Park Avenue, New York, N.Y. 10017	686-4500

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] (Signature of representative or person making charge)
Attorney for Charging Party (Title or office, if any)

Carl A. Schwarz, Jr.
Address 230 Park Avenue, New York, N.Y. 686-4500 (Telephone number) April 2, 1975 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 865-496

BEST COPY AVAILABLE

GENERAL COUNSEL'S
EXHIBIT 1(h)

Affidavit of Service

[redacted] April 3, 1975

Dist. 1199, Nat'l. Un. of Hosp. & Health
Care Employees (St. Luke's Hosp. Center)

2-CB-3709

St. Luke's Hosp. Center
114th Street & Amsterdam Avenue
New York, N.Y. 10025

I certify that I served the above-referred charge this day by post paid
cc: regi[redacted]essee above together with a transmittal letter
of wi[redacted]

Subscribed and sworn to before me this 3rd day of April 19 75

Designated Agent

[dated May 8, 1975]

* * * * *

GENERAL COUNSEL'S
EXHIBIT 1(i)

ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING

It having been charged before the National Labor Relations Board, herein called the Board, in Case No. 2-CA-13501 by St. Luke's Professional Dieticians, herein called Dieticians that St. Luke's Hospital Center, herein called St. Luke's Hospital, and in Case No. 2-CB-5709 by Dieticians that District 1199, National Union of Hospital and Health Care Employees a division of RWDSU, AFL-CIO, herein called District 1199, have engaged in, and are engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act; and having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay:

IT HEREBY IS ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, Section 102.15, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 2-CA-13501 was filed by the law firm of Fellner and Rovins on October 25, 1974 and served by registered mail upon St. Luke's Hospital on October 26, 1974.

(b) The Charge in Case No. 2-CB-5709 was filed by the law firm of Fellner and Rovins on October 25, 1974, and served by registered mail upon District 1199 on October 26, 1974.

(c) The First Amended Charge in Case No. 2-CA-13501 was filed by Dieticians on April 3, 1975, and served by registered mail upon St. Luke's Hospital on April 4, 1975.

(d) The First Amended Charge in Case No. 2-CB-5709 was filed by Dieticians on April 3, 1975, and served by registered mail upon District 1199 on April 4, 1975.

2. St. Luke's Hospital is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

3. At all times material herein, St. Luke's Hospital, a New York non profit corporation with its offices and its principal place of business at 114th St. and Amerstdam Avenue, New York, New York 10025 is, and has been engaged in the operation of a general care hospital providing medical services to patients. During the past calendar year the Employer had gross revenues in excess of $1,000,000 and during the same period purchased goods, supplies and materials in excess of $50,000, of which in excess of $50,000 were purchased from firms located outside the State of New York and shipped directly to its New York facility from states other than New York State.

4. St. Luke's Hospital is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. (a) The Guild of Professional Technical and Office Employees, Local 1199 Drug and Hospital Union AFL-CIO, hereinafter called Local 1199, was and had been at all times material during New York State Labor Relations Board proceedings described below, a labor organization within the meaning of Section 2(5) of the Act.

(b) On or about May 1974 a determination was made by Local 1199 to amend, *inter alia,* its name and on or about January 1975 Local 1199's

name was amended to District 1199, National Union of Hospital and Health Care Employees, a division of RWDSU, AFL-CIO.

(c) District 1199 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6. On June 21, 1973 the New York State Labor Relations Board issued a pro tanto Certification of Representative in which District 1199, then named Local 1199, was certified as the exclusive representative for the purposes of collective-bargaining of all "full time and regularly employed part time technical and professional employees employed by St. Luke's Hospital Center" excluding, *inter alia,* the theraputic dieticians.

7. On or about August 1, 1973 St. Luke's Hospital and District 1199, then named Local 1199, executed a collective-bargaining agreement relating to the hire, tenure and other terms and conditions of employment of certain employees of St. Luke's Hospital described above in paragraph 6 whereunder, *inter alia,* St. Luke's Hospital recognized District 1199 as the collective bargaining representative of such employees and provided that all employees described in paragraph 6 must become members and remain members of District 1199 as a condition of continued employment.

8. On May 22, 1974 the New York State Labor Relations Board issued a Decision, Order and Amended Certification of Representative in which it amended the certification described above in paragraph 6 to include theraputic dieticians in the unit.

9. At all times material herein the theraputic dieticians employed by St. Luke's Hospital are and have been professional employees within the meaning of Section 2(12) and 9(b)(1) of the Act.

10. During the term of the August 1, 1973 agreement described above in paragraph 7, by exchange of letters dated June 7, 1974 and July 19, 1974, St. Luke's Hospital, by Richard DeChristoford, its assistant vice-president and Di

District 1199 by Jesse Olson, its executive vice-president agreed to include within the unit described above in paragraph 6, theraputic dieticians notwithstanding the fact that theraputic dieticians were not afforded an opportunity to vote for inclusion in the unit described in paragraph 6.

11. On or about July 26, 1974 St. Luke's Hospital and District 1199 executed and since that date have maintained in effect and enforced a successor collective-bargaining agreement relating to the hire, tenure and other terms and conditions of employment of certain employees of St. Luke's Hospital whereunder dieticians were included in the professional and technical unit described above in paragraph 6, notwithstanding the fact that the theraputic dieticians were not afforded an opportunity to vote for inclusion in that unit.

12. The agreement described above in paragraph 11, contains, *inter alia,* a provision which requires membership in good standing in District 1199 as a condition of continued employment.

.13. District 1199 and St. Luke's Hospital executed, and thereafter maintained in effect and enforced the aforesaid agreements as described above in paragraphs 10, 11, and 12 notwithstanding the fact that the theraputic dieticians described above in paragraph 9 were not afforded an opportunity to vote for inclusion in the unit described above in paragraphs 6 and 10.

14. On or about October 16, 1974, by letter of Jesse Olson, its executive vice-president, District 1199 "insist[ed] that the Hospital enforce the Union security clause Article II of the collective bargaining agreement," described above in paragraph 11. The letter further stated that failure to do so by October 22nd will compel us to bring the matter before arbitration.

15. Pursuant to and by virtue of the agreement, described above in paragraphs 11 and 12 and District 1199's demand as described above in paragraph 14, St. Luke's Hospital by its director of food services Robert Nelson, its supervisor, notified the theraputic dieticians by memo, dated October 18, 1974, as follows:

"Please be advised that we are obligated by contract to request each dietician to establish and maintain membership in the Union as a condition of continued employment . . . Each dietician has 20 calendar days in which to comply or to terminate . . ."

16. By the acts described above in paragraphs 10, 11, 12, 13 and 15 and by each of said acts, St. Luke's Hospital interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

17. By the acts described above in paragraphs 10, 11, 12, 13 and 15 and by each of said acts, St. Luke's Hospital discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby encouraging membership in a labor organization, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

18. By the acts described above in paragraphs 10, 11, 12, 13 and 14 and by each of said acts, District 1199 restrained and coerced, and is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

19. By the acts described above in paragraphs 10, 11, 12, 13 and 14 and by each of said acts, District 1199 caused and attempted to cause, and is causing and attempting to cause an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Section 2(6) and (7) of the Act.

20. The acts of Respondents described above in paragraphs 10 through 19, occurring in connection with the operations of St. Luke's Hospital described above in paragraphs 2, 3 and 4, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 23rd day of June 1975, at 11:00 a.m., at 26 Federal Plaza, Room 3614, in the City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise and give testimony.

You are further notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, the Respondents shall each file with the Regional Director, Region 2, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidate Complaint within ten (10) days days from the service thereof, and that unless each does all of the allegations in the Consolidated Complaint shall be deemed to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondents shall serve a copy thereof on each of the other parties.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearing Held Before the National Labor Relations Board in Unfair Labor Practice Cases is attached.

Dated at New York, New York this 8th day of May 1975.

/s/ Winifred D. Morio

Winifred D. Morio, Acting Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, room 3614
New York, New York 10007

FORM NLRB-4668
(1-73)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GPO 941-739

FORM NLRB-4338
(5-63)

NATIONAL LABOR RELATIONS BOARD

NOTICE

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

(1) The request must be in writing. An original and two copies must be served on the Regional Director;

(2) Grounds therefor must be set forth *in detail;*

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties *(listed below)*, and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

St. Luke's Hospital Center
Att: Richard DeCristoford
114 St. and Amsterdam Ave.
N.Y.C. 10025

District 1199, National Union of Hospital and Health Care Employees
Att: Jesse Olson
310 W. 43rd St.
N.Y.C. 10036

Simpson, Thatcher and Bartlett
Att: John W. O'Weiler, Esq.
1 Battery Park Plaza
New York, N.Y. 10004

Fellner and Roving
Att: Carl Schwarz, Jr., Esq.
230 Park Ave.
N.Y.C. 10017

GENERAL COUNSEL'S
EXHIBIT 1(j)

Form NLRB-877
(11-56)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ST. LUKES HOSPITAL CENTER
AND
ST. LUKES PROFESSIONAL DIETICIANS
AND
DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES A DIVISION OF RWDSU, AFL-CIO
Party to the Contract

DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES A DIVISION OF RWDSU, AFL-CIO
(ST. LUKES HOSPITAL CENTER)
AND
ST. LUKES PROFESSIONAL DIETICIANS
AND
ST. LUKES HOSPITAL CENTER
Party to the Contract

Case No. 2-CA-13501
2-CB-5709

AFFIDAVIT OF SERVICE OF Order Consolidating Cases, Consolidated Complaint and Notice of Hearing

DATE OF MAILING May 8, 1975

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered/~~certified~~ mail upon the following persons, addressed to them at the following addresses:

St. Luke's Hospital Center
Att: Richard DeCristoford
114 St. and Amsterdam Ave.
N.Y.C. 10025

District 1199, National Union of Hospital and Health Care Employees
Att: Jesse Olson
310 W. 43rd St.
N.Y.C. 10036

Simpson, Thatcher and Bartlett
Att: John W. O'Weiler, Esq.
1 Battery Park Plaza
New York, N.Y. 10004

Fellner and Rovins
Att: Carl Schwarz, Jr., Esq.
230 Park Ave.
N.Y.C. 10017

Subscribed and sworn to before me
this 8th day of May, 1975
Linda M. Moscola
Designated Agent.
NATIONAL LABOR RELATIONS BOARD

U. S. Government Printing Office 1973 No. 502-868
873-583

[dated May 19, 1975]

* * * * *

GENERAL COUNSEL'S
EXHIBIT 1(k)

ORDER EXTENDING TIME TO ANSWER

IT HEREBY IS ORDERED that the time within which Respondent may file an Answer to the Complaint issued herein be, and the same hereby is extended to and including June 3, 1975.

Dated at New York, New York this 19th day of May 1975.

/s/ Sideny Danielson

Sidney Danielson, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

BEST COPY AVAILABLE

GENERAL COUNSEL'S
EXHIBIT 1(l)

Form NLRB-777 (11-56)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ST. LUKES HOSPITAL CENTER
AND
ST. LUKES PROFESSIONAL DIETICIANS
AND
DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES A DIVISION OF RWDSU, AFL-CIO
Party to the Contract

DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES A DIVISION OF RWDSU, AFL-CIO
(ST. LUKES HOSPITAL CENTER)
AND
ST. LUKES PROFESSIONAL DIETICIANS
AND
ST. LUKES HOSPITAL CENTER
Party to the Contract

Case No. 2-CA-13501
2-CB-5709

AFFIDAVIT OF SERVICE OF ORDER EXTENDING TIME TO ANSWER

DATE OF MAILING May 19, 1975

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered/~~certified~~ mail upon the following persons, addressed to them at the following addresses:

St. Luke's Hospital Center
Att: Richard DeCristoford
114 St. and Amstardam Ave.
N.Y.C. 10025

District 1199, National Union of Hospital and
Health Care Employees
Att: Jesse Olson
310 W. 43rd St.
N.Y.C. 10036

Simpson, Thatcher and Bartlett
Att: John W. O'Weiler, Esq.
1 Battery Park Plaza
New York, N.Y. 10004

Fellner and Roving
Att: Carl Schwarz, Jr., Esq.
230 Park Ave.
N.Y.C. 10017

Subscribed and sworn to before me
this 19th day of May, 19 75

Designated Agent

NATIONAL LABOR RELATIONS BOARD

U. S. Government Printing Office 1973 No. 502-889
878-993

[dated May 19, 1975]

GENERAL COUNSEL'S
EXHIBIT 1(m)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

* * * * *

ANSWER

St. Luke's Hospital Center, a Respondent herein, by Simpson Thacher & Bartlett, its attorneys, answering the complaint herein respectfully alleges as follows:

1. Admits the allegations set forth in paragraphs 1, 2 and 3 of the complaint.

2. Denies the allegations set forth in paragraph 4 of the complaint, but admits that St. Luke's Hospital Center is, and has been since August 25, 1974, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. Admits the allegations set forth in paragraphs 5, 6, 7, 8 and 9 of the complaint.

4. Denies the allegations set forth in paragraphs 10, 11, 12 and 13 of the complaint, but admits that following issuance of the amended Certification of Representative referred to in paragraph 8 of the complaint St. Luke's Hospital Center and District 1199, agreed by Letter Agreement dated July 19, 1974 to the inclusion of the Therapeutic Dieticians within the scope of the parties August 1, 1973 Agreement, that the foregoing Agreement was succeeded by an Agreement effective July 1, 1974 which included within its coverage the Therapeutic Dieticians, that both such Agreements included a provision requiring membership in good standing in District 1199 as a condition of employment following the statutory time period and that such Agreements have been and continue in full force and effect to this date.

5. Denies the allegations set forth in paragraphs 14 and 15 of the complaint, but admits that on or about October 17, 1974 St. Luke's Hospital Center received a letter dated October 16, 1974, signed by Jesse Olson, Executive Vice President, District 1199, which stated in part that

> "We must at this time insist that the Hospital enforce the Union Security Clause, Article II of the collective bargaining agreement . . .
>
> Failure to do so by October 22nd will compel us to bring the matter to arbitration."

and that on or about October 18, 1974 St. Luke's Hospital Center, pursuant to its Agreement with District 1199 and the above request, caused a memorandum to be delivered to the Therapeutic Dieticians which stated as follows:

> "Please be advised that we are obliged by contract to request each dietician to establish and maintain membership in the Union as a condition of continued employment as per Article 2 in the Contract as per the attached letter from District 1199, National Union of Hospital and Health Care Employees.
>
> Article 2, Section 2 states as follows: 'All employees on the active payroll as of July 1, 1974 who are not members of the Union shall become members of the Union within thirty (30) days after the effective date of this Agreement, except those who were required to become members sooner under the expired Agreement who shall become members on the earlier applicable date, and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.'
>
> Article 5 is as follows: 'Subject to Article XXVIII, an employee who has failed to maintain membership in good

standing as required by this Article, shall, within twenty (20) calendar days following receipt of a written demand from the Union requesting his discharge, be discharged if, during such period, the required dues and initiation fee have not been tendered.'

Each dietician has 20 calendar days in which to comply or to terminate. A copy of this letter plus the attached notice from District 1199 should be given to each of your dieticians."

6. Denies or lacks knowledge sufficient to form a belief with regard to the allegations set forth in paragraphs 16, 17, 18, 19 and 20 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

7. The St. Luke's Hospital Therapeutic Dieticians were included by the New York State Labor Relations Board in the St. Luke's Hospital Technical and Professional Unit in accordance with the New York State Labor Relations Act, at a time that St. Luke's Hospital was expressly excluded as a non-profit hospital from the coverage of the National Labor Relations Act.

8. The initial Collective Bargaining Agreement between St. Luke's Hospital Center and District 1199 covering technical and professional employees, including by Supplemental Letter Agreement the Therapeutic Dieticians and requiring membership in good standing in District 1199 as a condition of continued employment, was executed in accordance with the above referenced Certification of the New York State Labor Relations Board at a time that St. Luke's Hospital Center was expressly excluded as a non-profit hospital from the coverage of the National Labor Relations Act.

9. All of the foregoing actions were taken in accordance with applicable law in effect at the time and cannot be retroactively declared invalid.

WHEREFORE, Respondent St. Luke's Hospital Center prays that an order be made dismissing the complaint, and for such other relief as this Board may deem just and proper.

Dated: New York, New York
May 19, 1975

John W. Ohlweiler, Esq.
Simpson Thacher & Bartlett
Attorneys for St. Luke's Hospital Center
Office & P.O. Address
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

[Certificate of Service]

[dated May 30, 1975]

GENERAL COUNSEL'S
EXHIBIT 1(n)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

* * * * *

ANSWER

District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO by Sipser, Weinstock, Harper & Dorn its attorneys, answering the complaint herein alleges as follows:

1. Admits the allegations set forth in paragraphs 1, 2 and 3 of the complaint.

2. Denies or lacks knowledge sufficient to form a belief with regard to the allegations set forth in paragraph 4 of the complaint.

3. Admits the allegations set forth in paragraphs 5,

3. Admits the allegations set forth in paragraphs 5, 6, 7 and 8 of the complaint.

4. Denies the allegations set forth in paragraph 9 of the complaint.

5. Denies the allegations set forth in paragraphs 10, 11, 12, 13 14 and 15 of the complaint, but admits that pursuant to a valid New York State Labor Relations Board certification not challenged in court, District 1199 and St. Luke's Hospital agreed to include therapeutic dieticians within the scope of the parties' collective bargaining agreement; that the agreement includes a provision requiring membership in good standing in District 1199 as a condition of employment; that District 1199 requested enforcement of valid Union Security clause.

6. Denies the allegations set forth in paragraphs 16, 17, 18, 19 and 20 of the complaint.

FIRST AFFIRMATIVE DEFENSE

7. The New York State Labor Relations Board, after hearings, validly concluded that under the New York State Labor Relations Act which act was then binding upon the respondents, therapeutic dieticians should be included in a technical and professional unit.

8. The State Labor Relations Board issued a certification including the therapeutic dieticians in a technical and professional unit represented by District 1199. Such certification was not challenged in court by either St. Luke's Hospital or the therapeutic dieticians and was thus a final decision binding upon all the parties at a time when St. Luke's Hospital did not come under the coverage of the National Labor Relations Act.

9. The collective bargaining agreement between St. Luke's Hospital and District 1199, covering the therapeutic dieticians was executed in accordance with the State Labor Relations Board's valid certification and at a time when St. Luke's Hospital was not subject to the jurisdiction of the National Labor Relations Act.

10. The National Labor Relations Board has no jurisdiction to interfere with contractual relations and to retroactively declare invalid, actions taken in accordance with applicable law in effect when the actions complained of were taken.

SECOND AFFIRMATIVE DEFENSE

11. Even assuming that the therapeutic dieticians are professional employees within the meaning of the National Labor Relations Act, the petition filed by the dieticians at the State Labor Relations Board was not limited to therapeutic dieticians, but also included research dieticians and clinical dieticians. In addition petitions were filed for other alleged professional employees.

12. Included in the certification issued by the State Labor Relations Board were not only dieticians but such other alleged professional employees as pharmacists, dental hygienists, speech pathologists-audiologists, language pathologists, social workers, senior social workers, and research assistants.

13. Since only the therapeutic dieticians are involved in the present case and they constitute a minority of the professional workers in the bargaining unit certified by the State Labor Relations Board, it either must be presumed that a majority of the professional employees would have voted to be included in the bargaining unit or the complaint must be dismissed because under the present circumstances, it would be impossible to discover what the wishes of a majority of the professional employees would have been at the time of the State Labor Relations Board election, and the therapeutic dieticians are not entitled to a separate vote.

THIRD AFFIRMATIVE DEFENSE

14. As a matter of comity the National Labor Relations Board should accord recognition to the certification issued by the State Labor Relations Board.

FOURTH AFFIRMATIVE DEFENSE

15. The contract between St. Luke's Hospital and District 1199 provides for the resolution of all disputes via the grievance and arbitration process. Pursuant thereto, District 1199 instituted an arbitration pertaining to the failure of the dieticians to comply with the Union Security clause of the contract.

16. An arbitration has been held which was fair and regular in all respects and where the underlying facts of the instant complaint were put in issue.

17. The Board should defer to the above-mentioned arbitration proceeding.

WHEREFORE, respondent District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO requests that an order be made dismissing the complaint, and for such other relief as to the Board may seem just and proper.

Dated: New York, New York
May 30, 1975

Richard Dorn, Esq.
SIPSER, WEINSTOCK, HARPER
& DORN
Attorneys for District 1199
Office and P.O. Address
380 Madison Avenue
New York, New York 10017
(212) 867-2100

[Certificate of Service]

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is

Check Applicable Box

☐ Individual Verification the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ Corporate Verification the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at

Check Applicable Box

☐ Affidavit of Service By Mail On 19 deponent served the within upon attorney(s) for in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ Affidavit of Personal Service On 19 at deponent served the within upon the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on 19

.....
The name signed must be printed beneath

BEST COPY AVAILABLE

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

SIPSER, WEINSTOCK, HARPER & DORN

Attorneys for

Office and Post Office Address

380 Madison Avenue
NEW YORK, N. Y. 10017

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

SIPSER, WEINSTOCK, HARPER & DORN

Attorneys for

Office and Post Office Address

380 Madison Avenue
NEW YORK, N. Y. 10017

To

Attorney(s) for

Case No. 2-CA-13501
2-CB-5709 Year 19

BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

ST. LUKE'S HOSPITAL CENTER

and

ST. LUKE'S PROFESSIONAL DIETICIANS

and

DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL-CIO, etc.

ANSWER

SIPSER, WEINSTOCK, HARPER & DORN

Attorneys for District 1199

Office and Post Office Address, Telephone

380 Madison Avenue
NEW YORK, N. Y. 10017
867-2100

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

1500—©1975, JULIUS BLUMBERG, INC., 80 EXCHANGE PLACE, N.Y. 10004

GENERAL COUNSEL'S
EXHIBIT 1(n)

GENERAL COUNSEL'S EXHIBIT NO. 1 — ST. LUKE'S HOSPITAL CENTER
CASE NO. 2-CA-13501, CB-5709

1. a) Charge filed October 24, 1974, Case No. 2-CA-13501.

b) Affidavit of Service of 1(a) above, dated October 25, 1975.

c) Charge filed October 24, 1974, Case No. 2-CB-5709.

d) Affidavit of Service of 1(c) above, dated October 25, 1975.

e) Amended Charge filed, April 3, 1975, Case No. 2-CA-13501.

f) Affidavit of Service, dated April 3, 1975.

g) Amended Charge filed, April 3, 1975, Case No. 2-CB-5709.

h) Affidavit of Service, Dated April 3, 1975.

i) Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated May 8, 1975.

j) Affidavit of Service, 1(i) above, dated May 8, 1975.

k0 Order Extending time to Answer, dated May 19, 1975.

l) Affidavit of Service of 1(k) above, dated May 19, 1975.

m) Answer, dated May 19, 1975, received from Respondent May 20, 1975.

n) Answer, dated May 30, 1975, received from District 1199 June 2, 1975.

o) Index to General Counsel's Exhibit No. 1

53A

GENERAL COUNSEL'S
EXHIBIT 2

In the matter of ST. LUKE'S HOSPITAL CENTER
Employer

and

PROFESSIONAL DIETICIAN EMPLOYEES OF ST. LUKE'S HOSPITAL CENTER
Petitioner

CASE NO. S-E-4672G

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 705 OF THE NEW YORK STATE LABOR RELATIONS ACT

1. Name of employer St. Luke's Hospital Center Telephone No. 870-6000
2. Address of employer Amsterdam Avenue and 114th Street, New York, N.Y. 10025 (Include Post Office Zone Number)
3. General nature of business Voluntary Hospital
4. Approximate total number of employees app. 3,000
5. The types, classifications or groups of employees which the petitioner claims constitute the appropriate bargaining unit or units Professional Dieticians
6. Number of employees within such unit or units app. 14
7. Address at which employees in such unit or units are employed See 2 above
8. Names and addresses of any other known individuals or labor organizations who claim or may claim to represent any of the employees in such bargaining unit or units None
9. Does the petitioner request certification as the collective bargaining representative of the employees within the bargaining unit or units claimed to be appropriate? Yes
10. The undersigned hereby alleges that a question or controversy has arisen concerning the representation of the employees in the above bargaining unit or units, in that:

The employee s Association represents a majority of the professional dieticians and requests that it be certified.

[IF ADDITIONAL SPACE IS NECESSARY, ADD RIDER]

#2 Jul
GC # 6-23-75 P.P.

The undersigned requests that pursuant to section 705 of the New York State Labor Relations Act, the New York State Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives designated or selected by said employees.

STATE OF NEW YORK
CITY OF New York
COUNTY OF New York } ss.:

YVONNE GREEN being duly sworn, deposes and says that he is [illegible] representative of the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Yvonne Green
(Signature of Petitioner's Representative)

Sworn to before me this 21st day of May 1973

Lydia A. Gallo
NOTARY PUBLIC, State of New York

Name of employees or representatives filing this petition. (If a labor organization, give also name and official position of person acting for the organization.)

PROFESSIONAL DIETICIAN EMPLOYEES OF ST. LUKE'S HOSPITAL CENTER

By: Yvonne Green
(Signature and Title of Petitioner's Representative)

Address Amsterdam Ave. and 114th Street
(Include the Post Office Zone Number)
New York N.Y. 10025

Telephone No. 870-6000

(ONE ORIGINAL AND THREE COPIES OF THIS PETITION)

BEST COPY AVAILABLE

TO:

St. Luke's Hospital Center (C)
Amsterdam Avenue & 114th Street
New York, New York 10025

Simpson, Thacher & Bartlett, Esqs.
c/o John Chmeiler
1 Battery Park Plaza
New York, New York 10005

1. Professional Dietician Employees (C)
of St. Luke's Hospital Center
2. Amsterdam Avenue & 114th Street
New York, New York 10025

cc:

Guild of Professional, Technical (C)
and Office Employees, Local 1199,
Drug and Hospital Union, AFL-CIO
310 West 43rd Street
New York, New York 10036

Sipser, Weinstock, Harper & Dorn, Esqs.
380 Madison Avenue
New York, New York 10017

Telephone No. 870-6000

(OVER ORIGINAL AND THREE COPIES OF THIS PETITION)

GENERAL COUNSEL'S
EXHIBIT 3

NEW YORK STATE
LABOR RELATIONS BOARD

In the Matter of

ST. LUKE'S HOSPITAL CENTER

and Case No. SE-46726

PROFESSIONAL DIETICIAN EMPLOYEES
OF ST. LUKE'S HOSPITAL CENTER

AGREEMENT FOR CONSENT ELECTION

For the purposes of this election only, the undersigned Employer and the labor organization[s], herein called the Union[s], subject to the approval of the New York State Labor Relations Board, herein called the Board, hereby mutually stipulate and agree as follows:

1. The Union, or each Union, is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and dealing with employers concerning grievances, terms and conditions of employment and other mutual aid and protection.
whole or in part, of collective bargaining and of dealing with employers concerning grievances, terms and conditions of employment and other mutual aid and protection.

2. A question or controversy has arisen concerning the representation of certain employees of the Employer for purposes of collective bargaining.

3. An election by secret ballot shall be conducted, under the supervision of the Board, among the employees in the unit or units defined in paragraph "4", below, to determine whether or not they desire to be represented by the Union, or one of the Unions. The election shall be conducted at a time and place to be fixed by the Board, and in accordance with the customary procedures and policies of the Board.

4. The unit or units appropriate for the purposes of collective bargaining in which said election shall be held is, or are:

all full time and regularly employed part-time research dieticians, therapeutic dieticians, and clinic dieticians employed by St. Luke's Hospital Center at Amsterdam Avenue and 114th Street, New York City (excluding office, clerical and supervisory employees, Administrative Dietician, Assistant Administrative Dietician, Chief Dietician and all other employees).

5. The eligible voters shall be those employees included within the unit or units defined in paragraph "4", above, who were in the employ of the Employer

during the payroll period ending April 26, 1973.

and who are so employed on the date of the election, including employees who did not work during said period because they were ill, on vacation or temporarily laid off, but excluding employees who have voluntarily quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election.

5a. Regular part-time employees who have worked at least one day or seven hours a week in any 10 of the 13 calendar weeks immediately proceeding the date of the consent election agreement shall be eligible to vote.

6. The employer will furnish to the Board, at least 10 days prior to the election, an accurate list of all eligible voters, together with payroll receipts or other documents containing the signatures of these employees and their social security numbers, and such other records as may be necessary to the proper conduct of the election.

7. At least seven days before the election, the Employer will post in a conspicuous place in his premises copies of the Board's Notice of Election and the eligibility list.

8. The sole question to be voted on at the election shall be: "Do you desire to be represented for the purposes of collective bargaining by:

"SEE RIDER ANNEXED HERETO"

9. Each party hereto may station one observer at each polling place during the election for the purpose of challenging the eligibility of voters and to witness and certify the count. Observers shall be designated by the respective parties, subject to the approval of the Board.

10. Challenges of the eligibility of voters, objection to the conduct of the election, and all other questions arising out of the election shall be determined by the Board and the decision of the Board shall be final and binding upon the parties subject to the rights of the parties under Section 707.

11. The parties Employer will not interfere, directly or indirectly, with the employees' free choice of a collective bargaining representative and the Employer agrees that he will not comitt any unfair labor practices.

12. If a majority of the eligible employees in the unit, or in any of the units, voting in the election, signify their desire to be represented by the Union, or any of the Unions, the Board may certify that such Union has been duly designated by the employees in said unit, or units, as their exclusive representative for the purpose of collective bargaining. The Employer agrees that it will recognize and negotiate in good faith with the Union or Unions so certified by the Board as the exclusive representative, or representatives, of the employees in the unit or units subject to the rights of the parties under Section 707.

13. If two unions appear on the ballot and neither receives a majority of the valid votes cast at the election in the unit, or if there be more than one unit, in any unit, but the total number of valid votes cast in said unit for the two unions constitutes a majority of the valid votes cast, the Board may conduct a second or run-off election in such unit, or units, in which the employees may chose between the two unions as their representative for purposes of collective bargaining.

14. In the event the Board conducts a second or run-off election, or directs a new election, the Board may fix a new eligibility date.

15. To the best knowledge and belief of the undersigned, no other labor organization, group or individual claims or asserts an interest in representing the employees in the said unit or units.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed this 8th day of May, 1973.

WITNESSED:

_____

_____

_____

EMPLOYER ST. LUKE'S HOSPITAL CENTER

By /s/ signature illegible

UNION PROFESSIONAL DIETICIAN EMPLOYEES OF ST. LUKE'S HOSPITAL CENTER

By /s/ signature illegible

UNION GUILD OF PROFESSIONAL, TECHNICAL & OFFICE EMPLOYEES, LOCAL 1199, DRUG AND HOSPITAL UNION, AFL-CIO

By /s/ signature illegible

_____

RIDER

The ballot to be used in the election to be conducted among the research dieticians, therapeutic dieticians and clinic dieticians shall set forth three questions to be answered:

1. Do you want a separate bargaining unit limited only to research dieticians, therapeutic dieticians and clinic dieticians?

2. If there is a separate unit of research dieticians, therapeutic dieticians and clinic dieticians do you then desire to be represented for the purposes of collective bargaining by Professional Dietician Employees of St. Luke's Hospital Center?

3. If there is to be a combined unit of research dieticians, therapeutic dieticians, clinic dieticians and technical and professional employees, do you then desire to be represented for the purposes of collective bargaining by Guild of Professional, Technical and Office Employees, Local 1199, Drug and Hospital Union, AFL-CIO?

It is understood and agreed that the consent election agreement signed by the parties with respect to the petition filed in SE-46665 be amended and modified so as to delete therefrom all of the titles contained in and forming part of the appropriate bargaining unit as herein set forth in the event that a majority of the valid ballots cast with respect to Question "1" are in the affirmative.

It is understood that the execution of this consent election agreement by the Employer should not in any way be construed as agreement by the Employer with the procedure, including the form of ballot used by the State Labor Relations Board in the professional unit self determination elections or as a waiver of the Employer's right to object to that procedure at the appropriate time.

GENERAL COUNSEL'S
EXHIBIT 4

NEW YORK STATE
LABOR RELATIONS BOARD

In the Matter of

ST. LUKE'S HOSPITAL CENTER

-and- 36 SLRB NO. 33

GUILD OF PROFESSIONAL, TECHNICAL & OFFICE EMPLOYEES, LOCAL 1199, DRUG & HOSPITAL UNION, AFL-CIO CASE NO. SE-46665

MEMORANDUM and DIRECTION OF ELECTION

On April 16, 1973, the Union filed its petition herein, pursuant to Section 705 of the New York State Labor Relations Act, herein called the Act.

On May 8, 1973, the parties executed an Agreement for Consent Election in a unit of technical employees consisting of:

> all full time and regularly employed part time technical and professional employees employed by St. Luke's Hospital Center at Amsterdam Avenue and 114th Street, New York City, including but not limited to technicians, technologists, infant care technicians, counsellors, dietary assistants, respiratory therapists, dental hygienists, play therapists, physical therapists, research dieticians, pharmacists, speech pathologists/ audiologists, language pathologists, clinic dietician-food service, therapeutic dietician, social workers, senior social workers and social worker-assistant director, psychiatric day care (excluding all office, clerical and supervisory employees, supervising histology technologist, chief perfusionist, assistant chief inhalation therapy, body composition coordinator, assistant chief blood bank technologist, chief research technologists, assistant supervising radiologic technologist, supervising EKG

technician, supervisor technologist cardiology, supervising technologist clinical met., supervising hemotology technologist, supervisor bacteriology, assistant bacteriologist, supervising cytology technologist, chief technologist H, supervising chemistry technologist, chief physical RT technologist, supervising radiologic technologist, emergency lab supervisor, chief BB technologist, education coordinator radiology, chief technologist nuclear medicine, assistant chemist, assistant chief physical therapist, supervisor pharmacists, chief physical therapist, social worker supervisor, chief dietician, chief psychologist, social work supervisor and program director CP, social work supervisor and administrative coordinator, detoxification unit manager, supervising drug counsellor, supervisor of transfer services, chief EEG, chief physical recreational services, assistant chief inhalation therapist, darkroom supervisor, registered nurses, licensed practical nurses, physicians, all employees employed at West Side Rehabilitation Center at 103-7 West 108th Street, New York City and Neighboorhood Health Services Program at 160 West 100th Street, New York City, and all other employees).[1]

However, petitions have also been filed seeking to represent, in separate units, various classifications of employees included within such agreement, invoking the professional proviso of Section 705(2) of the Act.[2]

---

[1] The Union contends that the teachers and assistant teachers employed at the Riverside Therapeutic Nursery at 120th Street and Riverside Drive, New York City, should be included in the unit. The Employer contends they should be excluded. Pursuant to the terms of the consent election agreement, these employees will be permitted to cast challenged ballots, deferring until after the election determination of their unit placement.

[2] To date these petitions have sought units of: research dieticians, therapeutic dieticians and clinical dieticians (SE-46726); pharmacists and pharmacists-inter (SE-46727); physical therapists (SE-46764); dental hygienists (SE-46781); and electroencephalographic technologists (SE-46575).

We shall direct an election to be conducted in the unit of technical employees encompassed by the Consent Election Agreement. Those employees in classifications for which separate petitions are pending and undertermined may vote, but their ballots will be challenged. If any of them are subsequently found to be professionals, and they subsequently vote, in a self-determination election, in favor of a separate bargaining unit, they will then be excluded from the unit of technical employees. This procedure affords all employees an early opportunity to participate in an election, as agreed upon and requested by the parties, but reserves the issues affecting those employees in the challenged classifications pending future determination of their unit placement.[3]

As there are part time employees in the unit, we shall direct, as the parties have agreed, that regular part time employee who worked at least either 1 day, or 7 hours, a week in any 10 of the 13 weeks immediately preceding May 8, 1973, the date of the Agreement for Consent Election, shall be eligible to vote.[4]

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the New York State Labor Relations Board by the New York State Labor Relations Act, it is hereby

DIRECTED, that, as part of the investigation authorized by the Board, an election by secret ballot shall be conducted within 20 days from the date thereof, under the supervision of the Board or its agents, at a time, place, and during hours to be fixed by the Board, among all full time employees in the unit set

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[3] Adelphi Hospital, 32 SLRB 281, 283; New York University Medical Center, 31 SLRB 104, 107; The Salvation Army (Booth Memorial Hospital), 30 SLRB 221, 223; Trustees of Columbia University, 30 SLRB 273.

[4] Pursuant to the Agreement for Consent Election, the full time employees eligible to vote will be those employed during the payroll period ending April 26, 1973.

the payroll period ending April 26, 1973, and all regular part time employees in said unit who worked at least either 1 day, or 7 hours, a week in any 10 of the 13 calendar weeks immediately preceding May 8, 1973 (other than those who have voluntarily quit or who have been discharged for cause before the date of the election), to determine whether or not they desire to be represented for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment by Guild of Professional, Technical & Office Employees, Local 1199, Drug & Hospital Union, AFL-CIO.

Dated: New York, N.Y.
May 24, 1973

JAY KRAMER, Chairman
MARTIN GREEN, Member
MILDRED PAFUNDI ROSEN, Member

TO:

St. Luke's Hospital Center
Amsterdam Avenue and 114th Street
New York, N.Y. 10029

Simpson, Thacher and Bartlett, Esqs. (P)
1 Battery Park Plaza
New York, N.Y. 10005
ATT: John Ohlweiler, Esq.

Guild of Professional, Technical &
Office Employees, Local 1199, Drug
& Hospital Union, AFL-CIO
310 West 43rd Street
New York, N.Y. 10036

Sipser, Weinstock, Harper & Dorn, Esqs. (P)
380 Madison Avenue
New York, N.Y. 10017

NEW YORK STATE
LABOR RELATIONS BOARD

In the Matter of

ST. LUKE'S HOSPITAL CENTER

and

GUILD OF PROFESSIONAL, TECHNICAL,
AND OFFICE EMPLOYEES, LOCAL [illegible],
DRUG AND HOSPITAL UNION, AFL-CIO

MEMORANDUM

and

DIRECTION OF ELECTION

NEW YORK STATE LABOR RELATIONS BOARD
Two World Trade Center
New York, N. Y. 10047

GENERAL COUNSEL'S
EXHIBIT 5

NEW YORK STATE
LABOR RELATIONS BOARD

ST. LUKE'S HOSPITAL CENTER

-and-

GUILD OF PROFESSIONAL, TECHNICAL & OFFICE EMPLOYEES, LOCAL 1199, DRUG & HOSPITAL UNION, AFL-CIO

CASE NO: SE-46665

DATE OF ELECTION 6/7/73

PLACE OF ELECTION New York City

NOTICE OF ELECTION DATED 5/25/73

CODE NO. 20-30-0

REPORT UPON SECRET BALLOT

The undersigned Agent of the Board certifies that the ballots cast at this election were fairly and accurately counted and tabulated and that the secrecy of the balloting was maintained. The results of said count and tabulation follow:

APPROXIMATE NUMBER OF ELIGIBLE VOTERS 334

TOTAL NUMBER OF BALLOTS DEPOSITED IN THE BALLOT BOX 284

1. Number of votes for LOCAL 1199, AFL-CIO 151
2. Number of votes against LOCAL 1199, AFL-CIO 61

TOTAL NUMBER OF VALID BALLOTS COUNTED 212

3. Number of Blank Ballots 0
4. Number of Void Ballots 1
5. Number of Challenged Ballots 71

GRAND TOTAL OF BALLOTS TABULATED 284

DATED: 6/7/73

/s/ signature illegible
For the State Labor Relations Board

The undersigned acted as party observers in the conduct of this election. We hereby certify that the ballots cast at this election were fairly and accurately counted and tabulated by us. We further certify that the ballot box was

sealed and protected in the interests of a fair and secret vote, and the secrecy of the balloting was maintained throughout the election, and that the results were as indicated above.

_____	/s/ signature illegible
FOR THE EMPLOYER	FOR THE PETITIONER
	_____
	FOR THE INTERVENOR

We, the undersigned, acknowledge receipt of this Report Upon Secret Ballot personally handed to us on the _____ day of _____, 1973.

_____	_____
FOR THE EMPLOYER	FOR THE PETITIONER
	_____
	FOR THE INTERVENOR

Unless objections to this Report Upon Secret Ballot, together with a concise statement of the facts constituting the grounds of objections, are filed within five (5) days, and as prescribed by Section 17 of the Board's General Rules and Regulations (see below) the Board may constitute such failure as a waiver of objections.

DATED: New York, N.Y.
June 5, 1973

/s/ Alexander J. Serveri
ALEXANDER J. SERVERI
Labor Elections Supervisor

Section 17 of the Board's General Rules and Regulations:

> "Procedure Following Elections: Objections: Upon the conclusion of any election or elections, the Board, its Labor Elections Supervisor or other agent shall prepare a report as to the result of the election or elections. The Board shall cause this report to be served upon the parties. Within five (5) days thereafter, any party may serve upon all other parties, and file with the Board (with proof of service) an original and

three (3) copies of objections to the election or elections or to the report thereon. The objections shall contain a concise statement of the facts constituting the grounds of objections. The Board may direct oral argument to be heard before it, or direct that hearings to be held before a Trial Examiner, or otherwise investigate or make its determination with respect to the objections or to any challenged ballots."

TO:

St. Luke's Hospital Center
Amsterdam Avenue and 114th Street
New York, N.Y. 10029

Simpson, Thacher and Bartlett, Esqs. (P)
1 Battery Park Plaza
New York, N.Y. 10005
ATT: John Ohlweiler, Esq.

Guild of Professional, Technical &
Office Employees, Local 1199, Drug
& Hospital Union, AFL-CIO
310 West 43rd Street
New York, N.Y. 10036

Sipser, Weinstock, Harper & Dorn, Esqs.
380 Madison Avenue
New York, N.Y. 10017

THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO FILE OBJECTIONS TO THE ELECTION AND HEREBY CONSENTS TO THE FORTHWITH ISSUANCE BY THE BOARD OF A CERTIFICATION OF REPRESENTATIVES. AN ORDER OF DISMISSAL.

_____ EMPLOYER

_____ PETITIONER

_____ INTERVENOR

GENERAL COUNSEL'S
EXHIBIT 6

NEW YORK STATE
LABOR RELATIONS BOARD

In the Matter of

ST. LUKE'S HOSPITAL CENTER

-and-

GUILD OF PROFESSIONAL, TECHNICAL & OFFICE EMPLOYEES, LOCAL 1199, DRUG & HOSPITAL UNION, AFL-CIO

DECISION NO. 13615
CASE NO. SE-46665

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter on June 7, 1973, pursuant to the Board's Direction of Election dated May 24, 1973, and it appearing from the Report Upon Secret Ballot that a collective bargaining representative has been selected, and no objections having been filed by any of the parties within the time provided therefor,

NOW, THEREFORE, pursuant to the provisions of Section 705 of the New York State Labor Relations Act, it is hereby

CERTIFIED, Guild of Professional, Technical & Office Employees, Local 1199, Drug & Hospital Union, AFL-CIO, having been designated and selected as their representative for the purposes of collective bargaining by a majority of the employees casting valid ballots in the election said Guild of Professional, Technical & Office Employees, Local 1199, Drug & Hospital Union, AFL-CIO is the exclusive representative for the purposes of collective bargaining of all full time and regularaly employed part time technical and professional employees employed by St. Luke's Hospital Center at Amsterdam Avenue and 114th Street, New York City, including but not limited to technicians, electroencephalographic technologists, infant care technicians, counsellors, dietary assistants, respiratory therapists, play therapists, speech pathologists/audiologists, language pathologists, social workers, senior social workers and social worker-assistant

director, psychiatric day care excluding all office, clerical and supervisory employees, supervising histology technologist, chief perfusionist, assistant chief inhalation therapy, body composition coordinator, assistant chief blood bank technologist, chief research technologists, assistant supervising radiologic technologist, supervising EKG technician, supervisor technologist cardiology, supervising technologist clinical met., supervising hemotology technologist, supervisor bacteriology, assistant bacteriologist, supervising cytology technologist, chief technologist H, supervising chemistry technologist, chief physical RT technologist, supervising radiologic technologist, emergency lab supervisor, chief BB technologist, education coordinator radiology, chief technologist nuclear medicine, assistant chemist, assistant chief physical therapists, supervisor pharmacists, chief physical therapist, social worker supervisor, chief dietician, chief psychologist, social work supervisor and program director CP, social worker supervisor and administrative coordinator, detoxification unit manager, supervising drug counsellor, supervisor of transfer services, chief EEG, chief physical recreational services, assistant chief inhalation therapist, darkroom supervisor, registered nurses, licensed practical nurses, physicians, research dieticians, therapuetic dieticians, clinical dieticians, pharmacists, pharmacist-intern, physical therapists, dental hygienists, all employees employed at West Side Rehabilitation Center at 103-7 West 108th Street, New York City and Neighborhood Health Services Program at 160 West 100th Street, New York City, and all other employees).

Dated: New York, N.Y. June 21, 1973

JAY KRAMER
CHAIRMAN

MARTIN GREENE
MEMBER

MILDRED PAFUNDI ROSEN
MEMBER

GENERAL COUNSEL'S EXHIBIT 7

AGREEMENT made and entered into this 1st day of August, 1973, by and between ST. LUKE'S HOSPITAL CENTER, West 113th Street and Amsterdam Avenue, New York, New York 10025 (hereinafter called the "Hospital"),

and LOCAL 1199 DRUG AND HOSPITAL UNION, AFL-CIO, with its offices at 310 West 43rd Street, New York City, New York, on behalf of its Guild of Professional, Technical and Office Employees (hereinafter referred to as the "Union"), acting herein on behalf of the Employees of the said Hospital, as hereinafter defined, now employed and hereinafter to be employed and collectively designated as the "Employees".

WITNESSETH:

WHEREAS, the Hospital recognizes the Union as the collective bargaining representative for the Employees covered by this Agreement as hereinafter provided, and

WHEREAS, it is the intent and purpose of the parties hereto that this Agreement promote and improve the mutual interests of the patients of the Hospital as well as of its Employees and to avoid interruptions and interferences with services to patients and to set forth herein their agreement covering rates of pay, hours of work and conditions of employment,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I

RECOGNITION — THE COLLECTIVE BARGAINING UNIT

1. (a) The Hospital recognizes the Union as the sole and exclusive collective bargaining representative of all of the employees in the bargaining unit set forth in a stipulation [Stipulation I] between the Union and the Hospital annexed hereto.

(b) Excluded from the aforesaid bargaining unit is supervisory, confidential, executive and managerial employees, physicians, dentists, registered nurses, students whose performance of work at the Hospital is a part of the educational course of study such students are pursuing, part time employees who work a total of one-fifth (1/5th) of the regular full time work week or less for the job classifications in which they work, temporary employees as defined herein, and such other Employees as are listed as excluded in the stipulation hereunto annexed.

A temporary employee is one who is hired for a period of up to three (3) months and is so informed at the time of hire, and who is hired for a special project or to replace an Employee on leave or vacation. The said three (3) month period may be extended up to an additional three (3) months or for the length of the leave of the Employee being replaced, with the consent of the Union, which shall not be unreasonably withheld; however, such Employee shall become a member of the Union after the expiration of the initial three (3) month period.

(c) Temporary employees shall be entitled to fringe benefits as follows:

(1) Temporary employees will receive holiday pay in the same manner as regular, permanent employees, that is after their first thirty (30) days of employment.

(2) After three (3) months, temporary employees will begin to accrue vacation and sick leave beginning with the first day of the fourth month of employment. If, however, temporary employees are retained beyond six months in continuous employment, the accrual of vacation and sick leave will be from the first day of employment.

(3) Contributions of the Local 1199 Benefit Fund on behalf of temporary employees shall commence after three months of employment and shall cover the payroll periods beginning with the first day of the fourth month.

(4) Contributions to the Local 1199 Hospital Pension Fund and the Hospital League/Local 1199 Training and Upgrading Fund will not be made on behalf of employees unless and until they begin permanent employment, in which case such contributions shall commence for the payroll period in which they are made permanent.

(5) A temporary employee who has been employed three months or longer shall be treated as a regular employee for the purpose of filling vacant or available permanent positions for which the employee is immediately qualified.

2. It is agreed that this contract shall apply and continue in full force and effect at any location to which the Hospital may move. It is further agreed that this contract shall apply to any new or additional facilities of the Hospital and under its principal direction and control within the five boroughs of New York City, Nassau, Suffolk and Westchester.

3. Whenever the word "Employee" is used in this Agreement, it shall be deemed to mean the employees in the bargaining unit covered by this Agreement, as defined in Article I, Section 1 hereof.

4. At the time a new Employee subject to this Agreement is hired, the Hospital shall deliver to said Employee a written notice that the Hospital recognizes and is in contractual relations with the Union and quoting or paraphrasing the provisions of Articles II and III of this Agreement.

5. Part time Employees covered by this Agreement shall receive fringe benefits, wage rates and wage increases hereunder on a pro rata basis.

ARTICLE II

UNION SECURITY

1. All employees on the active payroll as of the date of execution of this Agreement who are members of the Union shall maintain their membership in the Union in good standing as a condition of continued employment.

2. All Employees on the active payroll as of the date of execution of this Agreement who are not members of the Union shall become members of the Union within thirty (30) days after the effective date of this Agreement, and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

3. All Employees hired after the date of execution of this Agreement shall become members of the Union no later than the thirtieth (30th) day following the beginning of such employment and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

4. For the pruposes of this Article, an Employee shall be considered a member of the Union in good standing if he tenders his periodic dues and initiation fee uniformly required as a condtiion of membership.

5. Subject to Article XXVIII, an Employee who has failed to maintain membership in good standing as required by this Article, shall, within twenty (20) calendar days following receipt of a written demand from the Union requesting his discharge, be discharged if, during such period, the required dues and intiation fee have not been tendered.

6. The Union agrees that it will indemnify and hold the Hospital harmless from any recovery of damages sustained by reason of any action taken under this Article.

ARTICLE III

CHECK-OFF

1. Upon receipt of a written authorization from an Employee in the form annexed hereto as Exhibit A, the Hospital shall, pursuant to such authorization, deduct from the wages due said Employee each month, starting not earlier than the first pay period following the completion of the Employee's first thirty (30) days of employment, and remit to the Union regular monthly dues and initiation fee, as fixed by the Union. The initiation fee shall be paid in two (2) consecutive monthly installments beginning the month following the completion of the probationary period.

2. Employees who do not sign written authorizations for deductions must adhere to the same payment procedure by making payments directly to the Union.

3. Upon receipt of a written authorization from an Employee in the form annexed hereto as Exhibit "B" the Hospital

* * * * *

GENERAL COUNSEL'S
EXHIBIT 8

NEW YORK STATE
LABOR RELATIONS BOARD

In the Matter of
ST. LUKE'S HOSPITAL CENTER

and

GUILD OF PROFESSIONAL, TECHNICAL AND OFFICE EMPLOYEES, LOCAL 1199, DRUG AND HOSPITAL UNION, AFL-CIO

and

PROFESSIONAL DIETICIAN EMPLOYEES OF ST. LUKE'S HOSPITAL CENTER

and

PHARMACIST EMPLOYEES OF ST. LUKE'S HOSPITAL CENTER

37 SLRB NO. 68
CASES NOS. SE-46665
SE-46726
SE-46727
SE-46781

APPEARANCES:

Simpson, Thacher & Bartlett, Esqs.
by John Ohlweiler, Esq.
for the Employer

Sipser, Weinstock, Harper & Dorn, Esq.
by Richard Dorn, Esq.
for Local 1199

Yvonne Green
for Professional Dietician Employees
of St. Luke's Hospital Center

Adib Roumie
for Pharmacist Employees of St. Luke's
Hospital Center

DECISION
ORDER
and
AMENDED CERTIFICATION OF REPRESENTATIVE

Guild of Professional, Technical and Office Employees, Local 1199, Drug and Hospital Union, AFL-CIO, herein called Local 1199, filed its petition in Case No. SE-46665, pursuant to Section 705 of the New York State Labor Relations Act, herein called the Act, on April 16, 1973.

On May 1, 1973, Professional Dietician Employees of St. Luke's Hospital Center, herein called Dieticians, filed its petition in Case No. SE-46726, and Pharmacist Employees of St. Luke's Hospital Center, herein called Pharmacists, filed its petition in Case No. SE-46727, pursuant to Section 705 of the Act.

On May 8, 1973, the Employer and Local 1199 executed an Agreement for Consent Election in Case No. SE-46665, which provided for an election to be held in a unit of "technical and professional employees" employed by St. Luke's Hospital Center including, among others, pharmacists research dieticians, thereapeutic dieticians, clinic dieticians-food service, and dental hygienists.[1] Also on May 8, 1973, the Employer and Pharmacists, and the Employer and Dieticians, executed separate Agreements for Consent Election involving the pharmacists and pharmacist-intern (Case No. SE-46727); and the research dieticians, therapeutic dieticians and clinic dieticians (Case No. SE-46726), respectively.

On May 17, 1973, Pharmacists also filed a petition in Case No. SE-46781, pursuant to Section 705 of the Act, seeking to represent the dental hygienists for the pruposes of collective bargaining.

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[1]The Agreement also provided that the teachers and assistant teachers employed at Riverside Therapeutic Nursery were to cast challenged ballots at the election, their inclusion in the unit being disputed.

The Board did not approve any of the foregoing Consent Election Agreements. Rather, by Memorandum and Direction of Election dated May 24, 1973 (36 SLRB 250), the Board, in accordance with Section 705(3) of the Act, directed a pre-hearing election in the unit of technical and professional employees encompassed by the Consent Election Agreement in Case No. SE-46665, and provided that ". . .Those employees in classifications for which separate petitions are pending and undetermined may vote, but their ballots will be challenged."[2]

The election was conducted by the Board on June 7, 1973, and on the same date the Board issued and served our Report Upon Secret Ballot which showed that 151 ballots were cast in favor of representation by Local 1199, 61 ballots against such representation, and 71 ballots were challenged.[3]

On June 21, 1973, the Board issued its pro tanto Certification of Representative[4] in Case No. SE-46665 to the effect that Local 1199 is the exclusive collective bargaining representative of the Employer's technical and professional employees (excluding, among others, research dieticians, therapeutic dieticians, clinical dieticians, pharmacists, pharmacist-intern, and dental hygienists) (Dec. No. 13615).

The Board ordered the consolidation of Cases Nos. SE-46665, SE-46726, SE-46727, and SE-46781 on July 5, 1973, for the purposes of hearing.

A hearing was duly held before Jesse Kleiman, Esquire, Trial Examiner, on August 10 and September 6, 1973.

Upon consideration of the entire record, the Board renders the following decision:

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[2]Included among these were: research dieticians, therapeutic dieticians and clinical dieticians (Case No. SE-46726); pharmacists (Case No. SE-46727); and dental hygienists (Case No. SE-46781).

[3]The total number of challenged ballots was not sufficient to affect the outcome of the election.

[4]See Trustees of Columbia University, 30 SLRB 273.

I. The Employer

St. Luke's Hospital Center, a voluntary non-profitmaking hospital, is located at Amsterdam Avenue and 114th Street, Borough of Manhattan, City and State of New York.[5]

II. The Status of Pharmacists and Dieticians as Labor Organizations

Local 1199 contends that Pharmacists and Dieticians are not labor organizations within the meaning of the Act.[6]

The Employer takes the position that under the "professional proviso" of Section 705(2) of the Act, which has been invoked by Dieticians and Pharmacists, there is no requirement that there be a "labor organization," or anyone claiming to represent employees of a "particular profession," in order to apply the proviso. We do not agree.

The "professional proviso" may be invoked only by a labor organization or other representative affirmatively seeking to engage in collective bargaining on behalf of the employees alleged to be professionals. As we held in The New York Infirmary, 27 SLRB 557, 561:

> " . . . Invocation [of the proviso] requires not only that the employees in fact be professional . . . employees, but that they, or some of them acting through a union representing such employees, affirmatively seek to bargain collectively as a separate unit. The proviso was designed to enable . . . professional employees, if they so desire, to bargain collectively as a separate

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[5] It also operates facilities at certain other locations, discussed below.

[6] It is undisputed that Local 1199 is a labor organization within the meaning of the Act. It has frequently been so found by the Board, and certified as such.

unit through a specialized representative. It was not intended to be used for negative, exclusionary purposes . . ."[7]

Although The New York Infirmary case invloved an application by an employer to exclude certain employees from a technical unit on the ground that they were professionals, the same governing principles apply to an application by the employees themselves, or their representative, if it is found that the only purpose is to seek exclusion from a broader unit in which the alleged professionals would normally be included.

Although a petition for certification as exclusive bargaining representative may, under Section 705(3) of the Act, be filed by a "representative"[8] as well as by a "labor organization," in either case the petitioner must seek to act "for the purposes of collective bargaining." That is the only type of representative the Board is authorized to certify by Section 705(1) of the Act.

Accordingly, before the Board may proceed with further investigation of the petitions involved herein, it must be established that Dieticians and Pharmacists, or either of them, is a "labor organization" within the meaning of Section 701(5) of the Act.[9]

1. Pharmacists

Adib Roumie, a staff pharmacist at St. Luke's Hospital Center and secretary-representative of Pharmacists, testified that sometime in late April, 1973, the pharmacists at the Hospital became aware that Local 1199 was seeking to represent, for purposes of collective bargaining, all technical employees at the

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[7]We have pointed out heretofore that the concept of appropriate unit is "an affirmative one" intended to foster collective bargaining. It is not "a negative concept" to be used as a means of forestalling collective bargaining. See Bee Line, Inc., 6 SLRB 686, 695.

[8]Wyckoff Heights Hospital, 34 SLRB 625; The Mount Sinai Hospital, 31 SLRB 255.

[9]These petitioners do not claim to be individual "representatives" within the meaning of Section 701(4) of the Act, as distinguished from "labor organizations" under Section 701 (5). Even if they did, they would still have to do so for the pruposes of collective bargaining. See Brown (Brownies Natural Food Products) 28 SLRB 372, 373; Wood (53rd Street Subway Liquor Store), 19 SLRB 87, 88 and cases there cited.

Hospital, including the pharmacists. At a meeting held shortly thereafter to discuss this possibility, the pharmacists decided that they did not wish to be represented by Local 1199, and for that purpose appointed Roumie to appear as their representative at the informal conference held at the Board's offices in late April, 1973.

At this conference,[10] Roumie advised the Board's labor relations examiner, herein referred to as the LRE, that these pharmacists did not want Local 1199 to represent them because: "We really don't feel we have anything to do with 1199." He testified that the LRE advised them that they could not bargain for themselves unless they formed their own bargaining unit.

The pharmacists thereupon formed Pharmacists and filed petitions with the Board.

The record herein is replete with testimony by Roumie clearly indicating that the sole purpose in forming this organization was, "to keep the pharmacists out" of the technical unit sought to be represented by Local 1199. At one point in his testimony, Roumie stated: "I specifically said we wanted to be excluded from 1199." At another, in response to a question posed by the attorney for Local 1199 inquiring if the purpose of the ". . .forming of this association . . .," was ". . . to keep the pharmacists out of Local 1199?", Roumie answered unequivocally, "Yes Sir." When the Trial Examiner then asked "any other purpose," Roumie responded, "No." In another instance he testified, ". . . in our mind we didn't feel there is anything to bargain about with the administration." [11]

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[10] At the hearing all parties expressly waived the operation of Section 59 of the Board's General Rules and Regulations. Rule 59 prohibits testimony or evidence to be given or received at any hearing concerning transactions had or statements or communications made during the conduct or course of any informal condreence called and held by the Board or its agents, unless expressly waived.

[11] See Le Boff's Inc., 20 SLRB 262, 265; Lucullus Cake Shop, 14 SLRB 361, 364.

Under Section 703 of the Act, employees have the right to bargain collectively through representatives of their own choosing. At the very threshold it is essential that the purported "labor organization" which petitions the Board for certification under Section 705(3) of the Act must actually have, as one of its objectives, collective bargaining on behalf of employees.[12]

A statement attached to the petition herein recites:

> "We the undersigned pharmacists employed by the St. Luke's Hospital Center do hereby designate the PHARMACIST EMPLOYEES OF ST. LUKE'S HOSPITAL CENTER as our collective bargaining representative for the pur- purpose of bargaining on our behalf with respect to wages, hours and conditions of employment."[13]

However, the Board, in its investigation to determine whether a purported labor organization does in fact meet the requirements of the Act, is not bound by such informal self-serving statements relating to purposes, where the weight of the evidence, from the record considered as a whole, negates it, as it does here.[14]

Upon the entire record, we find and conclude that Pharmacists is not a "labor organization" within the meaning of Section 701(5) of the Act.[15] Accordingly, we shall dismiss the petitions filed by it in Cases Nos. SE-46727

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[12] Act, Section 701(5). See Syosset Lanes, Inc., 27 SLRB 268, 269; Charlie Banks Wines & Liquors, Inc., 19 SLRB 352, 353.

[13] The dental hygienist employed at the Hospital executed a similar statement designating Pharmacists as her collective bargaining representative.

[14] St. Luke's Hospital Center, 37 SLRB No. 23; LeBoff's Inc., 20 SLRB 262, 265; Charlie Banks Wines & Liquors, Inc., 19 SLRB 352, 354.

[15] LeBoff's Inc., 20 SLRB 262, 265; Charlie Banks Wines & Liquors, Inc., 19 SLRB 352, 354; Lucullus Cake Shop, 14 SLRB 361, 365. See also, Brownies Natural Food Products, 28 SLRB 372, 373; 53rd Street Liquor Store, 19 SLRB 87, 88 and cases there cited.

and SE-46781, and do not reach the other issues raised by those petitions, particularly as to whether the specific employees involved therein are professionals within the meaning of Section 705(2) of the Act.

2. Dieticians

Yvonne Green, a clinic dietician [16] and the "representative" of Dieticians,[17] testified that when the dieticians became aware in late April, 1973, that Local 1199 was seeking to represent a unit of technical employees including dieticians, they held a meeting and decided that they did not wish to be represented by Local 1199.

Green, who was chosen as the group's representative, appeared at the informal conference held at the Board's offices on April 30, 1973. In response to the LRE's advice [18] that if they wished to represent themselves, they had to form an organization, Dieticians filed a petition with the Board on May 1, 1973. Annexed to the petition was a statement similar to that attached to the petition filed by Pharmacists, discussed above, which recited that Dieticians was designated as ". . . our collective bargaining representative for the purposes of bargaining on our behalf with respect to wages, hours and conditions of employment."

Green stated that at subsequent "get-togethers" the dieticians discussed the "pros and cons" of being represented by Local 1199. Her testimony contains numerous statement clearly demonstrating that the only purpose for the dieticians having "formed together" was ". . . to make sure we were not being represented by Local 1199."

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[16] There are approximately 18 dietician employees at the Hospital. They include: clinic dieticians, who work in the out-patient department and interpret diet prescriptions for patients leaving the Hospital, teach out-patients abut proper diet, and act as consultants to the community in the surround area of the Hospital; therapeutic dieticians, who formulate diets for in-patients; research dieticians, who do research in the metabolic unit; and administrative dieticians, who work in kitchens supervising food preparation.

[17] Green testified that she holds no official position as an officer of this organization except as "representative for the group," there being no elected officers.

[18] The parties again waived the operation of Rule 59. See footnote 10, above.

For the reasons stated above as to Pharmacist, it is equally clear from the record considered as a whole that Dieticians has not been formed or designated for the purposes of collective bargaining, but solely to avoid representation by Local 1199. We find, therefore, that it is not a "labor organization" within the meaning of Section 701(5) of the Act. Accordingly, we shall dismiss the petition filed by it in Case No. SE-47626, and do not reach the other issues raised by that petition, particularly as to whether the employees involved therein are professionals within the meaning of Section 705(2) of the Act.

III. The Appropriate Unit

Case No. SE-46665 involves generally an agreed upon unit of technical and professional employees.

Having dismissed, for reasons stated above, the petitions of Pharmacists and Dieticians seeking separate units of certain allegedly professional employees,[19] we shall include in the unit the pharmacists, pharmacist-intern, research dieticians, therapeutic dieticians, clinical dieticians, and dental hygienists, and shall amend our Certification of Representative to that effect. [20]

[19] We have heretofore found that pharmacists are "a particular profession" within the meaning of the Act. See, for example, Wyckoff Heights Hospital, 31 SLRB 17; University Hospital, etc., 29 SLRB 166; Roosevelt Hospital, 29 SLRB 448.

We have not as yet passed upon that issue as to dieticians, and have included them in units of technical employees. See, for example, Richmond Memorial Hospital, 36 SLRB 30; St. Luke's Memorial Hospital Center, 33 SLRB 422; Adelphi Hospital, 32 SLRB 464 and 32 SLRB 281; Massapequa General Hospital, 29 SLRB 46; The New York Infirmary, 27 SLRB 55.

This appears to be the first instance in which a question has been raised as to dental hygienist.

[20] For similar reasons, on March 20, 1974, we dismissed a petition in Case No. SE-46800 seeking a separate unit of "research assistants." (St. Luke's Hospital Center, 34 SLRB No. 23) Accordingly, we shall also amend the Certification of Representative so as specifically to include these positions in the unit of technical employees.

Upon a petition filed on May 15, 1973, in Case No. SE-46746, the Board, on August 22, 1973, certified another labor organization as the exclusive bargaining representative of the licensed and registered physical therapists, who constitute a "particular profession" within the meaning of Section 705(2) of the Act (Dec. No. 13664). Accordingly, they have been excluded from the certified unit of technical and professional employees.

There remains for consideration the issue of whether to include in the unit of technical employees the teachers and assistant teachers employed at Riverside Therapeutic Nursery. Local 1199 contends that they should be included; the Employer, that they should be excluded. [21]

Riverside Therapeutic Nrusery is a nursery school for children between the ages of 2 and 6 years who have a psychological or neurological distribance, ". . . particularly for the various childhood psychoses and minimal cerebral disfunctions." This may be manifested by the children having speech problems to the point where they cannot communicate through language at all. The school is located in the Riverside Church Nursery [22] on Riverside Drive and 120th Street, Borough of Manhattan, City and State of New York. One teacher and one teacher-intern[23] are presently employed at this facility.

The director of the therapeutic nursery is also the director of child psychiatry at St. Luke's Hospital Center, between which 2 operations he divides his time. One-half the funding of this facility is provided by the New York City Department of Mental Health and Retardation, the other half by the Employer. The budget for the therapeutic nursery is prepared by the Employer separate from its other budgets, and has to be approved by the New York City Department of Mental Health and Retardation. This includes establishing the rate of salary for these teachers. The administration, supervision and post graduate training of these teachers is handled by the Employer's

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[21] These teachers and assistant-teachers were allowed to cast challenged ballots in the election, ". . . deferring until after the election determination of their unit placement." See 36 SLRB 250, 251. Their ballots did not affect the results of the election.

[22] The Riverside Therapeutic Nursery is physically located within the Riverside Church Nursery property. There is interplay between the 2 facilities, such as the transfer of children from the therapeutic nursery to the normal nursery when they reach a stage of adjustment where they can be integrated with normal children. There is also discussions between the teachers of the 2 nurseries. However, there is no interchange or transfer of teachers between the two, and the Employer admits that it is the sole employer of the teachers at the therapeutic nursery.

[23] This employee is also known as "assistant-teacher."

Department of Psychiatry, but the Bank Street College of Education initially provides the teachers for this program.[24]

The teachers are hired on an annual basis and work 10 months of the year. Although they receive Blue Cross and Blue Shield insurance benefits, as do the Hospital's employees, generally their other working conditions are different. The teachers work 30 hours per week, whereas the normal work-week for other employees is 371 1/2 hours. The teachers receive no set vacation days or holidays, being employed on an annual basis.

Although there is some interaction between the teachers' function and that of other hospital employees because the children have all their needs, medical and otherwise, administered by the Hospital, and their education is part of this process,[25] there is no interchange of duties between the teachers and the other hospital employees.

The Employer also administers West Side Rehabilitation Center at 103-7 West 108th Street, and Neighborhood Health Services Program at 160 West 110th Street, both also in the Borough of Manhattan, which are physically separated from its main hospital and plant.[26] The employees at these facilities were expressly excluded by agreement of the parties from the unit of technical employees.

Upon the entire, record, we find that the teachers and the assistant-teacher are employed in separate and distinct types of work, at a location away from

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[24]The Bank Street College selects and refers the teachers to the Employer; the Employer's Director of the Therapeutic Nursery approves the selections. A "supervisor" at the Bank Street College participates in the training program for these teachers, and acts as consultant and coordinator of this program between the Employer and the College.

[25]For example, the teachers will consult with the Employer's social service workers when the child's problems in the area of learning relate in part to family relationship.

[26]These facilities have their own directors and supervisory personnel located at the site.

[27]Compare Auburn Memorial Hospital, 37 SLRB No. 3; The Jewish Hospital of Brooklyn, 30 SLRB 138.

the Hospital, and have different duties, qualifications, working conditions and interests from the employees in the technical unit.[27] Accordingly, we shall exclude them from the unit of technical employees working at the Hospital, and shall amend the Certification of Representative in Case No. SE-46665 so as to exclude them.

ORDER and AMENDED
CERTIFICATION OF REPRESENTATIVE

By virtue of and pursuant to the power vested in the New York State Labor Relations Board by the New York State Labor Relations Act, it is hereby

ORDERED, that the petitions for investigation and certification of representative filed by Professional Dietician Employees of St. Luke's Hospital Center in Case No. SE-46726 on May 1, 1973, and by Pharmacist Employees of St. Luke's Hospital Center in Cases Nos. SE-46727 and SE-46781 on May 1, 1973, and May 17, 1973, respectively, be, and the same hereby are, dismissed; and it is further

ORDERED, that the Certification of Representative in Case No. SE-46665 (Dec. No. 13615) be, and the same hereby is, amended effective June 21, 1973, so as : (1) to include in the appropriate bargaining unit the research dieticians, therapeutic dieticians, clinical dieticians, pharmacists, pharmacist-intern, dental hygienists and research assistants; and (2) to exclude from the above unit the employees at Riverside Therapeutic Nursery located at Riverside Drive and 120th Street, Borough of Manhattan, City and State of New York; and it is

CERTIFIED, that Guild of Professional, Technical and Office Employees, Local 1199, Drug and Hospital Union, AFL-CIO, has been designated and selected as representative for the purposes of collective bargaining by a majority of the employees casting valid ballots in the election and that, pursuant to

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27 mmmmmmmmmmmmmmmmmmmmmmm

the provisions of Section 705 of the Act, said Union is the exclusive representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment of all full time and regular part time technical and professional employees employed by St. Luke's Hospital Center at Amsterdam Avenue and 114th Street, Borough of Manhattan, City and State of New York, including, but not limited to, technicians, electroencephalographic technologists, infant care technicians, counsellors, dietary assistants, respiratory therapists, play therapists, speech pathologists/ audiologists, language pathologists, social workers, senior social workers, social worker-assistant director, psychiatric day care, research dieticians, therapeutic dieticians, clinical dieticians, pharmacists, pharmacist-intern, dental hygienists, and research assistants (excluding all office, clerical and supervisory employees, supervising histology technologist, chief perfusionist, assistant chief inhalation therapy, body composition coordinator, assistant chief blood bank technologist, chief research technologists, assistant supervising radiologic technologist, supervising EKG technician, supervisor technologist cardiology, supervising technologist clinical met., supervising hemotology technologist, supervisor bacteriology, assistant bacteriologist, supervising cytology technologist, chief technologist H, supervising chemistry technologist, chief physical RT technologist, supervising radiologic technologist, emergency lab supervisor, chief BB technologist, education coordinator radiology, chief technologist nuclear medicine, assistant chemist, assistant chief physical therapist, supervisor pharmacists, chief physical therapist, social worker supervisor, chief dietician, chief psychologist, social work supervisor and program director CP, social work supervisor and administrative coordinator, detoxification unit manager, supervising drug counsellor, supervisor of transfer services, chief EEG, chief physical recreational services, assistant chief inhalation therapist, darkroom supervisor, registered nurses, licensed practical nurses, licensed and registered physical therapists, physicians, all employees

employed at West Side Rehabilitation Center at 103-7 West 108th Street, Neighborhood Health Services Program at 160 West 100th Street, and Riverside Therapeutic Nursery at Riverside Church Nursery, Riverside Drive and 120th Street, all in the Borough of Manhattan, City and State of New York, and all other employees).

Dated: New York, N.Y.
May 22, 1974

JAY KRAMER, Chairman

MILDRED PAFUNDI ROSEN, Member

TO:

St. Luke's Hospital Center (C)
Amsterdam Avenue and 114th Street
New York, N.Y. 10029
ATT: Richard DeChristoford
Director of Personnel

Simpson, Thacher & Bartlett, Esq.
1 Battery Park Plaza
New York, N.Y. 10005

Guild of Professional, Technical and
Office Employees, Local 1199, Drug
and Hospital Union, AFL-CIO
310 West 43rd Street
New York, N.Y. 10036

Sipser, Weinstock, Harper & Dorn, Esqs.
380 Madison Avenue
New York, N.Y. 10017

Professional Dietician Employees of (C)
St. Luke's Hospital Center
Amsterdam Avenue and 114th Street
New York, N.Y. 10025
ATT: Yvonne Green

Pharmacist Employees of St. Luke's (C)
Hospital Center
Amsterdam Avenue and 114th Street
New York, N.Y. 10025
ATT: Adib Roumie

GENERAL COUNSEL'S
EXHIBIT 9

[Letterhead]

June 7, 1974

Mr. Richard DeCristoford
Assistant Vice President for Personnel
St. Luke's Medical Center
113th Street and Amsterdam Avenue
New York, New York 10025

Dear Mr. DeChristoford:

In light of the recent decision by the New York State Labor Relations Board with respect to petitions covering the pharmacists, pharmacist interns, research dieticians, therapeutic dieticians, clinical dieticians and dental hygienists, I recommend that we incorporate the following proposals into the collective bargaining agreement covering the professional and technical bargaining unit:

1. That the following classifications and hiring rates be included in the collective bargaining agreement as of May 1, 1974:

(a)	Pharmacist	$ 287
(b)	Pharmacy Intern	211
(c)	Dietician ADA	231
(d)	Dietician Graduate	212
(e)	Dental Hygienist	187

2. That retroactive to May 1, 1974 contributions be made for employees in classification stipulated in 1 above to the 1199 National Benefit Fund, 1199 Pension Plan, and 1199 Training and Upgrading Fund as provided in Articles 21, 22, and 20 respectively of the collective bargaining agreement.

3. That retroactive to May 1, 1974 dues deductions be made for employees in classifications stipulated in 1 above pursuant to Article 3 of the collective bargaining agreement. Initiation fees shall be waived.

Mr. Richard DeChristoford 6/7/74 2

If you concur with the above, please sign below and return a copy for our files. If there are any questions, please contact me so that we might expedite this matter.

Very truly yours,

/s/ Daniel Ratner

Daniel Ratner
Organizer

DR: rs
coe: 1199

Richard DeChristoford
Vice President for Personnel

GENERAL COUNSEL'S
EXHIBIT 10

[Letterhead]

July 19, 1974

District 1199 National Union of Hospital
and Health Care Employees, RWSDSU, AFL-CIO
310 West 43rd Street
New York, N.Y. 10036

Attention: Mr. Daniel Ratner — Organizer

Dear Mr. Ratner:

The following is our understanding of the agreement between the Hospital and your Union with regard to inclusion of the Pharmacists, Dieticians and Dental Hygienists described in SLRB Case Nos. SE-4665, SE-46727 and SE-46781, within the coverage of the parties Collective Bargaining Agreement applicable to the Hospital's non-supervisory technical and professional employees.

1. The following classifications and hiring rates shall be incorporated within the parties Collective Agreement effective as of July 1, 1974:

a.	Pharmacist	— $ 287.00
b.	Pharmacy Intern	— 211.00
c.	Dietician ADA	— 231.00
d.	Dietician Graduate	— 212.00
e.	Dental Hygienist	— 187.00

2. The provisions of Articles 20, 21 and 22 regarding contributions to the Joint Benefit Pension Plan and Training and Upgrading Funds shall be implemented with regard to the above-described employees, effective May 1, 1974.

3. The provisions of Article 3 of the parties Collective Agreement regarding checkoff of Union dues shall be implemented with regard to the above-described employees, effective May 1, 1974. It is understood that the Union initiation fee shall be waived for the above employees presently employed by the Hospital.

4. All other provisions of the parties Collective Agreement shall be effective, with regard to the above employees, on the date of execution of this letter.

5. Uniform allowance, when applicable, will be implemented in two steps within the term of this contract.

If the foregoing conforms with your understanding of our agreement, please execute this letter agreement in the manner set forth below and return a copy for our files. If there are any questions or comments, please do not hesitate to call the undersigned.

Very truly yours,

/s/ Richard DeChristoford

Richard DeChristoford
Assistant Vice President

Agreed to and accepted this
day of July, 1974

Jesse Olson

GENERAL COUNSEL'S
EXHIBIT 11

COLLECTIVE BARGAINING
AGREEMENT

Between

League of Voluntary Hospitals
and Homes of New York

and

District 1199
National Union of Hospital
and Health Care Employees
RWDSU/AFL-CIO

1974-1976

ST. LUKE'S HOSPITAL CENTER

GC+1' f.d 6-23-75 p.r.

DISTRICT 1199
NATIONAL UNION OF HOSPITAL
AND HEALTH CARE EMPLOYEES
a Division of RWDSU/AFL-CIO
310 West 43rd Street
New York, N.Y. 10036
JU 2-1890

LEAGUE OF VOLUNTARY HOSPITALS
AND HOMES OF NEW YORK
60 East 42nd Street
New York, N.Y. 10017
MU 7-3347

COLLECTIVE BARGAINING
AGREEMENT

Between

League of Voluntary Hospitals
and Homes of New York

and

District 1199
National Union of Hospital
and Health Care Employees
RWDSU/AFL-CIO

1974-1976

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AGREEMENT made and entered into this 26th day of July, 1974 by and between the LEAGUE OF VOLUNTARY HOSPITALS AND HOMES OF NEW YORK, with its offices at 60 East 42nd Street, New York, N.Y. 10017 (hereinafter called the "League"), as agent for and on behalf of each of its member institutions whose names appear on Schedule A annexed hereto and made a part hereof (each of which is hereinafter designated as the "Hospital") and DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, with its offices at 310 West 43rd Street, New York, N.Y. (hereinafter referred to as the "Union"), acting herein on behalf of the Employees of the said Hospital, as hereinafter defined, now employed and hereafter to be employed and collectively designated as the "Employees."

WITNESSETH:

WHEREAS, the Hospital recognizes the Union as the collective bargaining representative for the Employees covered by this Agreement as hereinafter provided, and

WHEREAS, it is the intent and purpose of the parties hereto that this Agreement promote and improve the mutual interests of the patients of the Hospital as well as of its Employees and to avoid interruptions and interferences with services to patients and to set forth herein their agreement covering rates of pay, hours of work and conditions of employment,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I

Recognition—The Collective Bargaining Unit

1. (a) The Hospital recognizes the Union as the sole and exclusive collective bargaining representative of all of the employees in the bargaining unit(s) set forth in a stipulation (Stipulation I) between the Union and each Hospital to be annexed hereto.

(b) Excluded from each of the aforesaid bargaining units are supervisory, confidential, executive and managerial employees, physicians, dentists, registered nurses, students whose performance of work at the Hospital is a part of the educational course of study such students are pursuing, part-time Employees who work a total of one-fifth (1/5) of the regular full time work week or less for the job classifications in which they work, temporary Employees as defined herein, and such other Employees as are listed as excluded in the stipulations hereunto annexed.

2. It is agreed that this contract shall apply and continue in full force and effect at any location to which the Hospital may move. It is further agreed that this contract shall apply to any new or additional facilities of the Hospital and under its principal direction and control within the five boroughs of New York City, Nassau, Suffolk and Westchester Counties.

3. To the extent permitted by law, whenever a Hospital hereafter shall enter into an affiliation agreement with the City of New York, the Hospital shall extend recognition to the Union hereunder for the Employees employed by the Hospital under such affiliation and this contract shall apply to such Employees.

4. Whenever the word "Employee" is used in this Agreement, it shall be deemed to mean the employees in the bargaining unit(s) covered by this Agreement, as defined in Article I, Section 1 hereof.

5. At the time a new Employee subject to this Agreement is hired, the Hospital shall deliver to said Employee a written notice that the Hospital recognizes and is in contractual relations with the Union and quoting or paraphrasing the provisions of Articles II and III of this Agreement.

6. Part-time Employees covered by this agreement shall receive fringe benefits, wage rates and wage increases hereunder on a pro rata basis.

ARTICLE II

Union Security

1. All Employees on the active payroll as of July 1, 1974, who are members of the Union shall maintain their membership in the Union in good standing as a condition of continued employment.

2. All Employees on the active payroll as of July 1, 1974 who are not members of the Union shall become members of the Union within thirty (30) days after the effective date of this Agreement, except those who were required to become members sooner under the expired Agreement who shall become members on the earlier applicable date, and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

3. All Employees hired after July 1, 1974 shall become members of the Union no later than the thirtieth (30th) day following the beginning of such employment and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

4. For the purposes of this Article, an Employee shall be considered a member of the Union in good standing if he/she tenders his/her periodic dues and initiation fee uniformly required as a condition of membership.

5. Subject to Article XXVIII, an Employee who has failed to maintain membership in good standing as required by this Article, shall within twenty (20) calendar days following receipt of a written demand from the Union requesting his discharge, be discharged if, during such period, the required dues and initiation fee have not been tendered.

6. The Union agrees that it will indemnify and hold the Hospital harmless from any recovery of damages sustained by reason of any action taken under this Article.

ARTICLE III

Check-Off

1. Upon receipt of a written authorization from an Employee in the form annexed hereto as Exhibit A, the Hospital shall, pursuant to such authorization, deduct from the wages due said Employee each month, starting not earlier than the first pay period following the completion of the Employee's first thirty (30) days of employment, and remit to the Union regular monthly dues and initiation fee, as fixed by the Union. The initiation fee shall be paid in two (2) consecutive monthly installments beginning the month following the completion of the probationary period.

2. Employees who do not sign written authorizations for deductions must adhere to the same payment procedure by making payments directly to the Union.

3. Upon receipt of a written authorization from an Employee in the form annexed hereto as Exhibit "B" the Hospital shall, pursuant to such authorization, deduct from the wages due said Employee each pay period, starting not earlier than the first period following the completion of the Employee's first thirty (30) days of employment, the sum specified in said authorization and remit same to the District 1199 Credit Union to the credit or account of said Employee. It is understood that such check-off and remittance shall be made by the Hospital wherever feasible.

4. Upon receipt of a written authorization in the form annexed hereto as Exhibit "C", the Hospital shall, pursuant to such authorization, deduct from the wages due said Employee once a year the sum specified in said authorization and remit same to the District 1199 Brotherhood Fund as the employee's voluntary contribution to said Fund. It is understood that such check-off and remittance shall be made by the Hospital wherever feasible.

5. The Hospital shall be relieved from making such "check-off" deductions upon (a) termination of employment, or (b) transfer to a job other than one covered by the bargaining unit, or (c) layoff from work, or (d) an agreed leave of absence, or (e) revocation of the check-off authorization in accordance with its terms or with applicable law. Notwithstanding the foregoing, upon the return of an Employee to work from any of the foregoing enumerated absences, the Hospital will immediately resume the obligation of making said deductions, except that deductions for terminated Employees shall be governed by paragraph 1 hereof. This provision, however, shall not relieve any Employees of the obligation to make the required dues and initiation payment pursuant to the Union constitution in order to remain in good standing.

6. The Hospital shall not be obliged to make dues deductions of any kind from any Employee who, during any dues month involved, shall have failed to receive sufficient wages to equal the dues deductions.

7. Each month, the Hospital shall remit to the Union all deductions for dues and initiation fees made from the wages of employees for the preceding month, together with a list of all Employees from whom dues and/or initiation fees have been deducted.

8. The Hospital agrees to furnish the Union each month with the names of newly hired Employees, their addresses, social security numbers, classifications of work, their dates of hire, and names of terminated Employees together with their dates of termination and names of Employees on leave of absence.

9. It is specifically agreed that the Hospital assumes no obligation, financial or otherwise, arising out of the provisions of this Article, and the Union hereby agrees that it will indemnify and hold the Hospital harmless from any claims, actions or proceedings by any employee arising from deductions made by the Hospital hereunder. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

ARTICLE IV

No Discrimination

Neither the Hospital nor the Union shall discriminate against or in favor of any Employee on account of race, color, creed, national origin, political belief, sex or age.

GENERAL COUNSEL'S
EXHIBIT 12

[Letterhead]

October 16, 1974

Mr. Richard DeCristoford,
Personnel Director
St. Luke's Hospital
114th Street and Amsterdam Avenue
New York, New York 10025

Dear Mr. DeCristoford:

It has come to our attention that a number of dietitians have not as yet signed Check-off Authorization and Benefit and Pension forms. We must at this time insist that the Hospital enforce the Union Security clause, Article II of the collective bargaining agreement, between the League of Voluntary Hospitals and Homes of New York and District 1199.

Failure to do so by October 22nd will compel us to bring the matter to arbitration. Please feel free to call if you have any questions about this matter.

Thank you for your cooperation.

Sincerely,

/s/ Jesse Olson
Jesse Olson,
Executive Vice President

JO: jw
coe: 1199

cc:
Frances Hubbard
Dan Ratner

GENERAL COUNSEL'S
EXHIBIT 13

INTER-OFFICE CORRESPONDENCE
ST. LUKE'S HOSPITAL CENTER
NEW YORK CITY

TO Robert Nelson
Director of Food Service

DATE October 18, 1974

FROM Richard DeChristoford
Assistant Vice President

SUBJECT

Please be advised that we are obliged by contract to request each dietitian to establish and maintain membership in the Union as a condition of continued employment as per Article 2 in the Contract as per the attached letter from District 1199, National Union of Hospital and Health Care Employees.

Article 2, Section 2 states as follows: "All employees on the active payroll as of July 1, 1974 who are not members of the Union shall become members of the Union within thirty (30) days after the effective date of this Agreement, except those who were required to become members sooner under the expired Agreement who shall become members on the earlier applicable date, and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment."

Article 5 is as follows: "Subject to Article XXVIII, an employee who has failed to maintain membership in good standing as required by this Article, shall, within twenty (20) calendar days following receipt of a written demand from the Union requesting his discharge, be discharged if, during such period, the required dues and initiation fee have not been tendered."

Each dietitian has 20 calendar days in which to comply or to terminate. A copy of this letter plus the attached notice from District 1199 should be given to each of your dietitians.

cc Mr. G. Ross
Mr. J. Ohlweiler

GENERAL COUNSEL'S
EXHIBIT 14

SIPSER, WEINSTOCK, HARPER & DORN
ATTORNEYS AT LAW
380 MADISON AVENUE
NEW YORK, N.Y. 10017
212, 687-3100

PHILIP SIPSER
HARRY WEINSTOCK
NELLE HARPER
RICHARD DORN
LEONARD LEBOWITZ

SIDNEY S. BERMAN
ROBERT M. ZISKIN
DONALD E. KLEIN
ELMER H. BESERFALL

ALAN R. HOWE
ADMITTED TO
PRACTICE IN PENNSYLVANIA
1010 BANKERS SECURITIES BUILDING
PHILADELPHIA, PA. 19107
(215) 732-0709

March 25, 1975

Simpson, Thacher & Bartlett, Esqs.
One Battery Park Plaza
New York, New York 10004

Attention: John W. Ohlweiler, Esq.

Re: St. Luke's Hospital
Enforcement of Union Security
Provision

Gentlemen:

This is to reaffirm the demand of District 1199 National Union of Hospital and Health Care Employees, AFL-CIO, that the employees of St. Luke's Eospital listed below be discharged for their failure to comply with the Union Security provision of the collective bargaining agreement between the Eospital and District 1199 (Article II). The names of the employees are as follows:

Arrogante, Rachel
Brooks, Johnnie
Connally, Brigid
Garcia, Daisy
Jans, Lutgarde
Lewis, Leonie
Miller, Ruther
Penaranda, Macaria
Posadas, Edna
Rada, Gloria
Russell, Saumdra
Sun, Alice
Thomas, Delores
Wang, Amy
Williams, Ernestine.

Very truly yours.

Richard Dorn

RICHARD DORN

RD:lf

BY HAND

BEST COPY AVAILABLE

GENERAL COUNSEL'S
EXHIBIT 15

THE AMERICAN DIETETIC ASSOCIATION
~~620~~ North Michigan Avenue, Chicago, Illinois 60611

REQUIREMENTS FOR MEMBERSHIP IN THE AMERICAN DIETETIC ASSOCIATION

EDUCATION, EXPERIENCE, ENDORSEMENT AND SUPERVISION REQUIREMENTS

All students beginning their freshman year in college in the fall semester of 1975 must follow Minimum Academic Requirements Plan IV. Plan III will be accepted for membership until January 1, 1980 for students who began their program earlier than 1975.

Executive Board Action, February 1973

I. Baccalaureate Degree*

Applicants with a degree from an accredited college or university which included or was followed by courses to meet the current minimum academic requirements adopted by the Executive Board must present an official transcript showing degree and one of the following:

1. Successful completion of a coordinated undergraduate program approved by The American Dietetic Association, and endorsement by the director of the program.
2. Successful completion of a dietetic internship approved by The American Dietetic Association, and endorsement by the director of internship.
3. Successful completion of a dietetic traineeship approved by The American Dietetic Association, and endorsement by ADA members who directed the program. Guidelines for a dietetic traineeship are available upon request.

II. Master's Degree

Applicants with a master's degree whose education meets the current minimum academic requirements adopted by the Executive Board must present:

1. Official transcripts of all academic degrees granted by accredited institutions.
2. Qualifying experience
   a) Six months of full-time or twelve months half-time of successful experience in some area of dietetics within the last five years. This experience must follow completion of academic requirements. (A position of less than six months will not be considered.)

   OR

   b) A one year graduate assistantship in some area of dietetics resulting in a master's degree within the last five years.
3. Endorsement and Supervision
   An endorser sponsors a candidate by signing the application and supplying personal and professional information relative to the responsibilities and success of the person requesting membership.
   a) Endorsement by the person who has observed, directed, and evaluated the applicant as satisfactory in his graduate program is required.
   b) A second endorsement by a person who has been associated with the applicant's work experience or assistantship is required.
   c) One of the two endorsers must have been a member of ADA for at least three years. If the person who has supervised the graduate program is not a member, the member endorser must be the person who supervised the applicant during the required experience, or a registered dietitian (R.D.) who has known the applicant and his work for at least six months.

III. Doctoral Degree

Applicants with a doctoral degree whose education meets the minimum academic requirements adopted by the Executive Board must present:

1. Official transcripts of all academic degrees granted by accredited institutions.
2. Sponsorship by a person who has been a member for three years and has been familiar with the applicant's work for at least a year.
3. Full implementation of the academic requirements under Plan IV will begin January 1, 1980. During interim, applications will be reviewed by the Membership Committee on an individual basis.

If the baccalaureate, master's or doctorate, or the academic requirements were completed 5 to 25 years prior to application, credit from an accredited college or university must be presented for one or more courses, for a total of not less than 4 semester hours in nutrition, food service management or related sciences, taken within the last five years. These must not be beginning level courses. If the degree was granted more than 25 years prior to application for membership, credit for two or more courses for a total of at least 8 semester hours must be presented.

*The current issue of the semiannual directory *Accredited Institutions of Higher Education*, American Council on Education, Washington, D.C. 20036, is accepted as a guide in determining whether an institution is "accredited."

THE AMERICAN DIETETIC ASSOCIATION
,0 North Michigan Avenue, Chicago, Illinois 611

Plan III*

MINIMUM ACADEMIC REQUIREMENTS FOR ADA MEMBERSHIP

A Baccalaureate Degree including the Core plus ONE Emphasis, plus ONE Concentration constitutes the Academic Requirements for Membership. See below the Specific Requirements for Specialized Programs. Credit for a Course May Be Used Only Once.

CORE SUBJECTS

22 semester hours*—Basic Minimum
All core subjects required

Natural Sciences—14 s. h.
- human physiology and bacteriology (6 s. h.)
- chemistry—8 s. h.

Food—6 s. h.
- selection, preparation, meal planning

Nutrition—2 s. h.

Plus one of the following:

EMPHASES

Choice of one Emphasis—9 semester hours—Basic Minimum
Underlined subject areas required

I

FOOD SERVICE MANAGEMENT
- *organization and management*
- *quantity food production and service*
- advanced food production management
- equipment selection, maintenance, and layout
- principles of accounting
- purchasing

or

II

EDUCATION (Business and Industry, Clinic, College, Extension, School, and Public Health)
- *educational principles and techniques*
- *educational psychology*
- anthropology
- child psychology
- sociology

or

III

FOODS—EXPERIMENTAL AND DEVELOPMENTAL
- *experimental foods*
- advanced bacteriology
- consumer economics
- cultural aspects of food
- food styling
- quantity food production and service
- psychology of advertising
- technology of food
- theory and techniqus of communication

Plus one of the following:

CONCENTRATIONS

Choice of one Concentration—15 semester hours—Basic Minimum
Underlined subject areas required

A

THERAPEUTIC AND ADMINISTRATIVE DIETETICS
- *advanced nutrition 2 s. h.*
- *biochemistry***
- *personnel management or industrial psychology*
- *principles of learning or educational psychology*
- Remainder of credit:
  - diet therapy****
  - advanced food production management, equipment selection, maintenance, and layout***
  - foods: cultural, experimental or technological
  - principles of accounting***
  - purchasing***

or

B

BUSINESS ADMINISTRATION
- *advanced accounting*
- *advanced food production management****
- *equipment selection, maintenance, and layout****
- *personnel management*
- *purchasing****
- Remainder of credit:
  - business law
  - communication
  - human relations
  - industrial psychology
  - labor economics

or

C

SCIENCE—FOODS AND NUTRITION
- *advanced nutrition 6 s. h.*
- *biochemistry***
- *foods: cultural, experimental or technological*
- Remainder of credit:
  - child growth and nutrition
  - community nutrition
  - diet therapy****
  - principles of learning or educational psychology
  - statistics
  - food processing and preservation

1. Applicants for Internship, Traineeship and Membership
   a. Clinical Interns: Core + Emphasis I or II + Concentration A or C
   b. College, Business, or Industry Interns: Core + Emphasis I + Concentration A or B
   c. Hospital Interns: Core + Emphasis I + Concentration A or C

2. Experience applicants for membership
   a. Bachelor's degree: Hospital: Core + Emphasis I + Concentration A or C
      Food Service Administration: Core + Emphasis I + Concentration A or B
   b. Master's degree: Core + Emphasis I, II, or III + Concentration A, B, or C

LEGEND *Social and behavioral sciences are considered to be essential and assumed to be included in college degree requirements.
**If not used in Core ***If not used in Emphasis I ****Required for hospital and clinic interns or trainees
*Food Chem. may be used by College or Industrial Interns

Adopted November 1 1958 Revised August, 1967

★Plans I and II have been discontinued

All students beginning their freshman year in college in the fall semester of 1975 must follow Minimum Academic Requirements Plan IV. Plan III will be accepted for membership until January 1, 1980 for students who began their program earlier than 1975.

Executive Board Action, February 1973

Plan IV

MINIMUM ACADEMIC REQUIREMENTS FOR ADA MEMBERSHIP

A Baccalaureate Degree Including Basic Requirements Plus One Area of Specialization*

		AREAS OF SPECIALIZATION IN DIETETICS			
AREA OF SUBJECT MATTER	BASIC REQUIREMENTS	General	Management	Clinical	Community
Physical & Biological Sciences	Chemistry, inorganic and organic Human physiology Microbiology	Biochemistry		Biochemistry Biochemical analysis [b]Anatomy or [b]advanced physiology or [b]genetics	Biochemistry
Behavioral & Social Sciences	Sociology or psychology (principles) Economics	Cultural anthropology or sociology	Labor economics or relations	Cultural anthropology or sociology	Cultural anthropology or sociology [c]Psychology
Professional Sciences	Food (composition, physical and chemical changes, quality, acceptability, and aesthetics) Prerequisite: organic chemistry Nutrition Prerequisites: human physiology & organic chemistry Management theory and principles	Food service systems management Nutrition in disease Prerequisite: biochemistry	Food service systems management Principles of business organization (Management of personnel) Financial management	Additional nutrition course Prerequisite: biochemistry Nutrition in disease Prerequisite: biochemistry	Nutrition in disease Prerequisite: biochemistry Nutrition and community health Prerequisite: biochemistry Food service systems management (volume food service in the community)
Communication Sciences	Writing (creative or technical) [c]Mathematics (competency equal to intermediate algebra) Learning theory or educational methods	[b]Data processing (computer logic) or [b]Data evaluation (statistics)	Data processing (computer logic) or Data evaluation (statistics)	Data evaluation (statistics)	Data evaluation (statistics)

[c]May be acquired prior to college entrance

[b]Recommended, not required

[c]If not completed in Basic Requirements

Adopted July 1, 1972

*Minimum Academic Requirements are expressed in terms of *basic competencies* rather than in specific credit hours, in *knowledge areas*, not in courses.

The College or University's plan for meeting these academic requirements must be approved by the ADA before they can be applied to the individual student.

UNION EXHIBIT 1

Position #	Title	# of Employees
115	Graduate Pharmacist	4
136	Staff Pharmacist	10
172	Social Worker	34
173	Sr. Social Worker	2
167	Occupational Therapist	5
160	Speech Therapist/Audio I	0
161	Speech Therapist/Audio 2	0
163	Language Pathologist	1
150	Speech Thpst/Audio Sr. 1	0
151	Speech Thpst/Audio Sr. 2	4
317	Research Technician A	4
318	Research Technician B	0
945	Dental Hygienist	0
185	Sr. Occupational Therapist	1
346	Research Technologist A	4
347	Research Technologist B	9
183	Clinic Dietitian	2
184	Therapeutic Dietitian	13
101	Research Dietitian	1
175	Sr. Recreational Therapist	0

UNION EXHIBIT 2

[dated May 27, 1975]

AMERICAN ARBITRATION ASSOCIATION, Administrator

In the Matter of the Arbitration between

DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES

and

Case No. 1330 0153 75

ST. LUKE'S HOSPITAL CENTER

OPINION and ORDER RETAINING JURISDICTION

Appearances:

For the Union:

Sipser, Weinstock, Harper & Dorn, by Richard Dorn, Esq.

For the Hospital:

Simpson, Thacher & Bartlett, by John W. Ohlweiler, Esq.

Before:

Morris P. Glushien
Arbitrator

OPINION

The undersigned was duly designated as Arbitrator under the procedures of the American Arbitration Association to hear and determine a dispute between District 1199, National Union of Hospital and Health Care Employees ("Union") and St. Luke's Hospital Center ("St. Luke's"). A hearing was held on March 25, 1975, at which the parties were afforded full opportunity to present their cases and make their arguments. Subsequently, on April 8, 1975, the Arbitrator held a conference with the parties to consider the impact of the NLRB proceedings hereafter mentioned.

The arbitration proceeding was instituted by the Union in order to obtain an Award directing St. Luke's to carry out and enforce Article II, the Union Security provision of the collective agreement, with respect to a recalcitrant group of 18 dieticians employed by St. Luke's. Article II reads as follows:

"Union Security

"1. All Employees on the active payroll as of July 1, 1974, who are members of the Union shall maintain their membership in the Union in good standing as a condition of continued employment.

"2. All Employees on the active payroll as of July 1, 1974, who are not members of the Union shall become members of the Union within thirty (30) days after the effective date of this Agreement, except those who were required to become members sooner under the expired Agreement who shall become members on the earlier applicable date, and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

"3. All Employees hired after July 1, 1974 shall become members of the Union no later than the thirtieth (30th) day following the beginning of such employment and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

"4. For the purposes of this Article, an Employee shall be considered a member of the Union in good standing if he/she tenders his/her periodic dues and initiation fee uniformly required as a condition of membership.

"5. Subject to Article XXVIII, an Employee who has failed to maintain membership in good standing as required by this

Article, shall within twenty (20) calendar days following receipt of a written demand from the Union requesting his discharge, be discharged if, during such period, the required dues and initiation fee have not been tendered.

"6. The Union agrees that it will indemnify and hold the Hospital harmless from any recovery of damages sustained by reason of any action taken under this Article."

The dieticians in question have refused to pay their periodic dues and initiation fee to the Union as a condition of continued employment, as this contractual provision with respect to Union membership requires (Section 4). The Union asks that St. Luke's be directed to discharge the dieticians if they persist in their refusal to meet the contractual obligation.

It is relevant at this point to set forth some history regarding the origin of the contract. As will be seen, it was executed *prior* to last year's amendments to the National Labor Relations Act (Public Law 93-360) which took effect August 25, 1974. These amendments for the first time extended the coverage of the National Act to non-profit hospitals such as St. Luke's. Prior thereto, and at the time when the contract came into being, St. Luke's was governed exclusively by state law as contained in the New York State Labor Relations Act.

On June 21, 1973, the State Board, after conducting an election, issued its pro tanto Certification of Representatives in Case No. SE-46665 in which the Union was certified as the bargaining representative of St. Luke's technical and professional employees.* The Certification excluded, for the time being, dieticians (and various other employees) as to whom State Board proceedings were still ongoing.

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* The dieticians and various other employees voted in the election under challenge.

Pursuant to the Certification of June 21, 1973, the Union and St. Luke's entered into a collective agreement on August 1, 1973 covering the unit then included in the Certification.

Meanwhile the proceedings before the State Board continued with respect to the dieticians and others. The dieticians contended they were professionals who should not be included in the same unit with non-professionals.

On May 22, 1974, the State Board issued its Decision, Order, and Amended Certification of Representative in the continued proceedings (Case Nos. SE-46665, SE-46726, SE-46727, SE-46781), 37 SLRB No. 68. Without finding it necessary to decide whether the dieticians were or were not professionals, the Board concluded that under state law the dieticians (as well as others) properly belonged in the original unit, and it amended the Certification accordingly.

Thereupon, by an exchange of letters dated June 7 and July 19, 1974, the Union and St. Luke's entered into an agreement covering the dieticians (and certain other groups) into the collective agreement. The newly included employees were granted wage and other improvements. On July 26, 1974, a formal agreement was executed for the enlarged unit.

The dieticians remained opposed to the Union and refused to become members, i.e., to pay their dues and initiation fee. On October 16, 1974, the Union wrote to St. Luke's insisting that it enforce the Union Security provision of the contract, Article II, or else the Union would carry the matter to arbitration. St. Luke's promptly posted a notice informing the dieticians that they had 20 days in which "to comply or to terminate".

The dieticians did neither. They took a different course entirely. It will be recalled that the National Act had gone in effect on August 25. What the dieticians did, a few days after the Hospital notice was posted, was to invoke the new statute. Through counsel, on October 25, they caused unfair labor practice charges to be filed with the National Labor Relations Board both

against St. Luke's and the Union (Case Nos. 2-CA-13501; 2-CB-5709). The charges asserted, in effect, that the attempted enforcement of the Union Security clause of the agreement against the dieticians was unlawful under Sections 8(a)(1) and (3), and 8(b)(1)(A) and (2), of the National Act. This claim of illegality in turn rested on the contention that the contractual bargaining unit was inappropriate under Section 9(b)(1) because it combined professionals and non-professionals in a single unit without having afforded the professionals a self-determination election on their inclusion.

The Second Region of the National Labor Relations Board in New York, with which the charges were filed, apparently considered the problem a difficult one. It referred the charges to the Division of Advice, Office of the General Counsel, in Washington, D.C., to determine whether they appeared to have sufficient merit to warrant issuance of complaints. The matter remained there under consideration and undetermined for many months.

Meanwhile the Union continued to press St. Luke's for enforcement of the Union Security provision. It wrote the Hospital on November 20, 1974, renewing the position taken in its October 16 letter, stating once again that if the provision were not carried out it would submit the matter to arbitration. And when St. Luke's refrained, the Union instituted the instant arbitration to compel obedience.

On the day of the hearing herein, March 25, 1975, the Union delivered another letter to St. Luke's listing 15 named dieticians and requesting they be discharged for failure to comply with Article II of the agreement. It also asked the Arbitrator to issue an Award directing St. Luke's to obey Article II and to discharge these dieticians if they did not pay the amounts owing for dues and initiation fee.

Having heard the proofs, I would undoubtedly have done what the Union requested were it not for the action taken by the General Counsel's Office to which I now come.

It so happens that at the very time the arbitration hearing was being held, a ruling was handed down by the General Counsel regarding the matter which had been referred to Washington. The General Counsel held that, in his role as the statutory prosecutor, he found sufficient merit in the unfair labor practice charges to warrant issuance of complaints and placement of the matter before the Board so that it might determine, as the statutory adjudicating body, whether the claim of illegality was or was not valid. In accordance with this ruling, complaints were issued on May 8, 1975, by the General Counsel against St. Luke's and the Union. The complaints have been consolidated and set forth before an NLRB Administrative Law Judge on June 23, 1975. That is where the NLRB proceeding now stands.

While the General Counsel's Advice rulings leading to issuance of complaints do not have to be, and usually are not, made public (cf. *NLRB v. Sears, Roebuck & Co.*, U.S. , 43 Law Week 4491, decided April 28, 1975), in this instance the General Counsel did publicize the ruling. He did so in the montly reports he is issuing on new questions arising under the aforementioned hospital amendments to the National Act.* The Arbitrator has thus been enabled to read and study the ruling and the rationale on which it is based.

I appreciate that, under the machinery of the National Labor Relations Act, the Administrative Law Judge in the first instance, and the Board and courts upon appeal, are assigned the primary task of determining whether unfair labor practices have or have not been committed by the parties in carrying out their agreement. Yet I too, when asked as Arbitrator to enforce the agreement, am faced with the question whether the agreement is lawful or not. I have considered the matter and must express my serious reservations regarding the validity of the General Counsel's position.

---

* The ruling is reprinted in BNA Daily Labor Report, March 26, 1975, No. 59, pages D-4, 5.

After all, what we have here is an agreement (together with its Union Security clause) which was indisputably valid at the time it was executed and took effect. A State Board, applying governing State law, had issued a formal Certification that dieticians belonged in a single appropriate bargaining unit with other employees. The parties under controlling State law were *required* to bargain in *that* unit; it would indeed have been improper for them not to do so. They obeyed the law; they bargained in the designated appropriate unit; they entered into a binding collective agreement, including a Union Security provision, covering that unit. The agreement granted higher wages and gave other benefits to the dieticians and other employees. Surely no one can doubt that, when the agreement was made, the unit was appropriate and the agreement was lawful.*

It is of fundamental significance in my view that, at the time the National Act took effect, nothing more remained to be done. Here, in sharp contrast with the situation in *Brookhaven Memorial Hospital,* 214 NLRB No. 159, upon which the General Counsel relies in his ruling, the State Board proceedings had been completed and closed months earlier. The collective agreement had been lawfully executed and was in full effect. In these circumstances to say that enforcement of the contract and its Union Security clause becomes unlawful strikes me as strange indeed.

There are a number of other factors adding to my doubts regarding the unfair labor practice proceedings, but I do not consider it necessary to write an extended opus on the subject. It will suffice to make brief mention of four points.

1. Section 8(a)(3) of the National Act; in describing Union Security agreements which are valid, refers to the representative's majority status

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* It might be added that the Union Security provision did no more than insure that the benefitted employees should not be "free riders" and should pay their share of the costs of collective bargaining.

in an "appropriate collective-bargaining unit covered by such agreement *when made*" (emphasis added). In the instant case, as already noted, the Union Security agreement, *when made,* was undeniably in a then "appropriate collective-bargaining unit", a unit so certified by the State Board under governing state law.

2. It is the general practice of the National Board (though hedged with some qualifications) to honor certifications of State agencies. As the New York State Labor Relations Board recently observed in *The Society of the New York Hospital,* 38 SLRB No. 23, citing a large group of cases (footnote 23):

> "we note that it is the well-known practice of the National Labor in appropriate cases, to give effect to the results of elections conducted by, and certifications issued by, state labor relations boards, other state or local government officials, state courts, or other impartial agencies or persons, even if the National Board thereafter assumes and asserts jurisdiction over the parties involved."

As I see it, effect should be given to the State Board certification in the instant case too.

3. Even in situations governed by the National Act from start to finish — and thus less to be condoned than the instant one — the National Board has upheld contracts in which professionals and non-professionals were combined in a single bargaining unit without a self-determination election for the professionals. *Retail Clerks Local Union No. 24 (Vincent Drugs No. 3, Inc.),* 144 NLRB 1247; *International Telephone and Telegraph,* 159 NLRB 1757. This shows that while the Board is precluded by Section 9(b)(1) of the Act from itself decreeing *in a representation proceeding* that such a unit is appropriate, the establishment of such unit *by other means* is not necessarily offensive to

the Act.* One might suppose that establishment of the unit as here — by Certification of the governing State agency followed by voluntary and completed agreement of the parties, all at a time when there was no National Act in effect — meets the standard of inoffensiveness.

4. Lastly, it seems to me to follow that if the Union Security provision, as charged, is unlawful under the National Act because it coerces unwilling employees in an inappropriate unit, so too is the entire agreement. Yet the General Counsel has refrained from carrying his challenge to its logical extension by attacking the whole contract. Perhaps he is hesitant to seek destruction of an agreement which was unquestionably lawful in its inception and which grants improved wages and other conditions to workers. But if he finds it appropriate to allow the rest of the agreement to stand, I cannot perceive why the Union Security provision should be singled out for different treatment.

For all the foregoing reasons, it is my view, at least tentatively, that the Union Security provision is lawful and entitled to enforcement.*

The problem remains as to what I, as Arbitrator, ought to do at this stage. I could conceivably issue an Award directing enforcement of the Union Security provision, but this might well bring me into head-on collision with

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*The General Counsel himself has stated in General Counsel's Memorandum 74-79; "Guidelines for Handling Unfair Labor Practice Cases Arising Under the 1974 Nonprofit Hospital Amendments to the Act," dated August 20, 1974, page 36:

> "But Section 9(b)(1) does not, the Board has held, either condemn the establishing of such a mixed unit by the parties, or invalidate as inappropriate a historically established contract unit simply because there is a joinder of professional and non-professional employees."

*I say "tentatively" because, since the General Counsel is not a party to these arbitration proceedings, I have not had the benefit of argument or briefs supporting his position which might persuade me to a different view.

with the administrative agency entrusted by Congress with the duty of enforcing the National Labor Relations Act. This is hardly a desirable outcome.

It will be remembered that the NLRB Administrative Law Judge is scheduled to hear the complaints on June 23, 1975, scarcely a month hence, and presumably his Decision will come down not too long thereafter. It seems to me that in the interests of comity, and common sense too, it is desirable to withhold a final Award in the instant proceeding at least until his Decision issues or there has been some other disposition of the NLRB case. It will be time enough at that point to reassess the situation.

I shall accordingly refrain from issuing a final Award at this stage. I am retaining jurisdiction with leave to either party to renew the proceedings when the NLRB Administrative Law Judge has rendered his Decision, or when there has been some other disposition of the NLRB case.

ORDER RETAINING JURISDICTION

For the reasons stated in the accompanying Opinion, I deem it inappropriate to issue a final Award at this stage. I am retaining jurisdiction with leave to either party to renew the proceedings when the NLRB Administrative Law Judge has rendered his Decision, or when there has been some other disposition of the National Labor Relations Board case.

/s/ Morris P. Glushien
Morris P. Glushien
Arbitrator

Dated: New York, New York
May 27, 1975

STATE OF NEW YORK :

SS.:

COUNTY OF NEW YORK:

On this 27th day of May, 1975, before me personally came and appeared MORRIS P. GLUSHIEN, to me known and known to me to be the individual described herein and who executed the Order herein, and he duly acknowledged to me that he executed the same.

/s/ David Dretein
David Dretein
[signature block illegible]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

* * * * *

26 Federal Plaza
New York, New York
June 23, 1975

* * * * *

PROCEEDINGS

JUDGE SILBERMAN: The hearing will come to order.

This is a formal hearing before the National Labor Relations Board in St. Luke's Hospital Center, Case 2-CA-13501 and District 1199, National Union of Hospital and Health Care Employees, a Division of RWDSU, AFL-CIO, Case 2-CB-5709.

These cases have been consolidated for purpose of hearing and a consolidated complaint has been issued in the cases.

The Administrative Law Judge conducting this hearing is Herbert Silberman.

Will the representatives of the parties state their appearances for the record.

MR. SPIVAK: Appearing for the General Counsel, your Honor, is Joel Spivak.

MR. SCHWARZ: Appearing for the St. Luke's Professional Dieticians, is Carl Schwarz.

MR. DORN: Appearing for the respondent District 1199, National Union of Hospital and Health Care Employees, Richard Dorn, of Sipser, Weinstock, Harper & Dorn.

MR. OHWEILER: Appearing for St. Luke's Hospital Center, John W. Ohlweiler, Simpson, Thacker & Bartlett.

JUDGE SILBERMAN: State your address, please.

One Battery Park Plaza, New York, New York. 10004.

JUDGE SILBERMAN: Very well.

You may proceed, Mr. Spivak.

MR. SPIVAK: At this time, your Honor, the General Counsel moves into evidence the introduction of the formal documents in this case, which have been previously marked for identification as General Counsel's Exhibits 1-A through 1-0, inclusive, No. 1-0 being the index and description of formal documents.

I have shown the documents to the parties and to me they have raised no objection.

(Documents so marked for identification as General Counsel's Exhibits 1-A through 1-0.)

JUDGE SILBERMAN: Are there any objections to the receipt of these documents in evidence?

MR. DORN: None.

MR. OHLWEILER: None.

MR. SCHWARZ: No, sir.

JUDGE SILBERMAN: Very well.

The documents are received in evidence.

(General Counsel's Exhibits 1-A through 1-0 for identification, received in evidence.)

JUDGE SILBERMAN: Mr. Spivak.

MR. SPIVAK: Initially, your Honor, I would also move at this time to

reflect the change in the pleadings.

There are references to therapeutic dieticians.

Since the complaint was drafted, I have learned that the term knowledge which is used by the hospital is that therapeutic dietician is generally a generic term for the position, that the hospital uses the term of therapeutic dietician as one position and they also use the reference of dietician for another position and clinical dietician for yet a third.

And while in a general sense they are all therapeutic dieticians, it reflects the place in the hospital at which they work.

I would move to amend the peladings to reflect that change.

JUDGE SILBERMAN: Well, now be more specific.

Your motion is that wherever in the complaint there appears the expression "therapeutic dieticians," it is understood that that expression includes research dieticians and clinical dieticians?

MR. SPIVAK: Yes.

JUDGE SILBERMAN: And that's your motion?

MR. SPIVAK: That's correct.

JUDGE SILBERMAN: Is there any objection to that motion?

MR. SCHWARZ: No objection.

MR. OHLWEILER: None.

MR. DORN: No objection.

JUDGE SILBERMAN: Very well.

The motion is granted.

MR. SPIVAK: Now, before I proceed with a statement of the facts as the parties –

JUDGE SILBERMAN: I indicated before we opened the record, Mr. Spivak, that I did not think it appropriate in this case to have any opening statements.

I suggested that the evidence in the case be adduced and then I will request oral argument.

MR. SPIVAK: Okay, your Honor.

Let me begin then by reading the statement of the facts of the parties.

We have spoken about the facts and we have agreed to the facts.

If any of my statements do not exactly reflect that which is –

JUDGE SILBERMAN: Are you making an offer as to a stipulation of facts?

MR. SPIVAK: Yes, your Honor.

At this time I offer a stipulation of facts –

JUDGE SILBERMAN: Just one moment.

MR. SPIVAK: Let's go off the record for just one moment, if we may, your Honor?

JUDGE SILBERMAN: Yes.

Off the record.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

Mr. Spivak.

MR. SPIVAK: Your Honor, at this time, I propose to offer several stipulations regarding documents and regarding evidence in this proceeding, which have been discussed by the parties off the record.

JUDGE SILBERMAN: Yes.

MR. SPIVAK: On April 16th, 1973, Local 1199 filed with the New York State Labor Relations Board, a petition for an election in a proposed unit of professional and technical employees of St. Luke's Hospital;

I propose a stipulation as to that fact.

JUDGE SILBERMAN: Do you gentlemen join in the stipulation?

MR. DORN: So stipulated.

MR. OHLWEILER: So stipulated.

MR. SCHWARZ: Agreed.

JUDGE SILBERMAN: The stipulation is accepted as part of the record. Proceed.

MR. SPIVAK: Therapeutic dieticians, as alleged in the complaint, formed an association called Professional Dieticians of St. Luke's Hospital Center and filed a petition with the State Board for an election in a unit of the hospital's therapeutic, clinical and research dieticians on May 1st, 1973.

Please mark this for identification.

(Document sc marked for identification as General Counsel's Exhibit 2.)

MR. SPIVAK: Your Honor, I have shown the parties a copy of General Counsel's Exhibit 2 for identification.

It is the petition filed by tne Professional Dieticians Association.

I offer it in evidence pursuant to stipulation (handing).

MR. OHLWEILER: Can we have clarification of the name which appears on that petition?

MR. SCHWARZ: Professional Dieticians of St. Luke's Hospital Center.

JUDGE SILBERMAN: Is there any objection to the receipt of this document in evidence?

MR. OHLWEILER: None.

MR. DORN: No.

MR. SCHWARZ: No.

JUDGE SILBERMAN: There being no objection, the documents is received in evidence.

(General Counsel's Exhibit No. 2 for identification, now received in evidence.)

MR. SPIVAK: May we go off the record, again, sir?

JUDGE SILBERMAN: Yes.

Off the record.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

Mr. Spivak.

MR. SPIVAK: Your Honor, there be documents to substantiate the factual matters upon which the following stipulation is to be made.

The General Counsel offers a stipulation that therapeutic dieticians, clinical dieticians and research dieticians are professional employees within the meaning of the National Labor Relations Act.

JUDGE SILBERMAN: Do the parties so stipulate?

MR. OHLWEILER: So stipulated.

JUDGE SILBERMAN: Very well.

The stipulation is accepted as part of the record.

MR. SPIVAK: Mark this document as General Counsel's Exhibit No. 3.

(Document so marked for identification as General Counsel's Exhibit No. 3.)

MR. SPIVAK: Your Honor, at this time I have General Counsel's Exhibit 3 for identification, entitled "Memorandum and Direction of Election," issued on May 24th, 1973, in which the State Board – excuse me.

At this time, your Honor, I would like to move to strike just the number because otherwise it is going to appear out of order.

JUDGE SILBERMAN: Yes.

MR. SPIVAK: I would ask that General Counsel's Exhibit 3 for identification, be marked as General Counsel's Exhibit 4 for identification.

(Document previously marked as General Counsel's Exhibit No. 3 for identification, now marked as General Counsel's

Exhibit No. 4 for identification.)

MR. SPIVAK: I would ask that the following document entitled "Agreement for Consent Election," dated May 8th, 1973, be marked as General Counsel's Exhibit No. 3 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 3.)

MR. SPIVAK: I'm showing the parties General Counsel's Exhibit 3 for identification, which is the agreement for consent election, signed on May 8th, 1973 by St. Luke's Hospital Center, Professional Dieticians Employees of St. Luke's Hospital Center and the Guild of Professional, Technical and Office Employees, Local 1199, Drug and Hospital Union, AFL-CIO (handing).

I offer it.

12 JUDGE SILBERMAN: Any objection?

MR. DORN: I object on the ground of relevancy.

Other than that I have no objection.

We have already stipulated that the dieticians are professionals, so I don't see why we need this.

JUDGE SILBERMAN: Any other objection?

MR. DORN: No.

MR. OHLWEILER: No.

JUDGE SILBERMAN: There being no other objections, I overrule the objection to relevancy and I receive in evidence General Counsel's Exhibit No. 3.

(General Counsel's Exhibit No. 3 for identification, now received in evidence.)

MR. SPIVAK: I previously marked, your Honor, a Memorandum and Direction of Election, dated May 24, 1973, as General Counsel's Exhibit No. 4 for identification.

JUDGE SILBERMAN: Yes.

MR. SPIVAK: In that Memorandum and Direction of Election, the State Board rejected the stipulation signed by the hospital dieticians' hospital and the union which would have permitted a separate representation of the dieticians and instead directed a pre-hearing election in the overall unit petitioned for by the union, permitting the dieticians and other classifications covered by separate petitions to cast challenge ballots.

13 I offer General Counsel's Exhibit 4 marked for identification into evidence.

Let the record show that I'm showing it to the other parties, your Honor (handing).

JUDGE SILBERMAN: Any objections?

MR. OHLWEILER: I have no objection to the document, your Honor.

I assume we are not stipulating to the introductory material that the General Counsel is giving orally with regard to the document.

What the Board did here was to direct an election based on the initial petition of the parties – of the union, reserving the questions concerning the other petitions that were filed by the professional groups.

JUDGE SILBERMAN: Well, as stated in General Counsel's Exhibit 4.

Very well.

I receive in evidence General Counsel's Exhibit No. 4.

(General Counsel's Exhibit No. 4 for identification, now received in evidence.)

MR. SCHWARZ: Your Honor, I don't think counsel's statement is accurate in its entirety.

The Board, aside from directing the election, also rejected the parties' agreement for Consent Election.

14 JUDGE SILBERMAN: Well, the document speaks for itself, unless it needs any explanation.

MR. SCHWARZ: No.

JUDGE SILBERMAN: It states, "We shall direct an election to be conducted in the unit of technical employees encompassed by the Consent Election Agreement.

"Those employees in classifications for which separate petitions are pending and undetermined, may vote but their ballots will be challenged.

"If any of them are subsequently found to be professionals and they subsequently vote in a self-determination election in favor of a separate bargaining unit, they will be excluded from the unit of technical employees."

Now, I have read, I think, the pertinent portion of General Counsel's Exhibit 4.

MR. SCHWARZ: Yes, sir.

MR. SPIVAK: I offer – please mark for identification, this document entitled "Report Upon Secret Ballot," dated June 7, 1973, as General Counsel's Exhibit No. 5 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 5.)

MR. SPIVAK: Your Honor, an election was conducted pursuant to the document marked General Counsel's Exhibit 4 – I offer – strike that.

I offer General Counsel's Exhibit 4 –

JUDGE SILBERMAN: It's already been accepted.

MR. SPIVAK: I'm sorry, your Honor.

Pursuant to the document, General Counsel's Exhibit 4, the election was conducted.

General Counsel's Exhibit 5 is the tally of ballots.

I offer it in evidence at this time, your Honor.

JUDGE SILBERMAN: Any objection to General Counsel's Exhibit 5 going into evidence, gentlemen?

MR. DORN: No objection.

MR. SCHWARZ: No objection.

MR. OHLWEILER: No objection.

JUDGE SILBERMAN: The document is received in evidence.

(General Counsel's Exhibit No. 5 for identification, now received in evidence.)

JUDGE SILBERMAN: May I ask this question:

I understand that the -- the document, as I see it, has certain lines for signature that are not signed.

Will the parties stipulate that this is the official report in the particular proceeding?

MR. OHLWEILER: Your Honor, this is the tally of ballots which was prepared on the day of the election by the New York State Labor Relations Board.

16 It has been signed by the petitioner; it's signed by the State Board; it is not signed by the employer, we were merely reserving whatever rights we might have had at the time to file objections.

JUDGE SILBERMAN: But, do I understand -- and will the parties stipulate that there is no dispute that General Counsel's Exhibit No. 5 is the official report of the results of the secret ballot election in that matter?

MR. DORN: I'll stipulate.

MR. OHLWEILER: So stipulated.

MR. SCHWARZ: Your Honor, since the dieticians were not a party to this election and have never seen this document before today, we can't stipulate, but we do not object to it.

JUDGE SILBERMAN: That's not adequate.

MR. SCHWARZ: Then we do stipulate.

JUDGE SILBERMAN: Very well.

16 It has been signed by the petitioner; it's signed by the State Board; it is not signed by the employer, we were merely reserving whatever rights we might have had at the time to file objections.

JUDGE SILBERMAN: But, do I understand – and will the parties stipulate that there is no dispute that General Counsel's Exhibit No. 5 is the official report of the results of the secret ballot election in that matter?

MR. DORN: I'll stipulate.

MR. OHLWEILER: So stipulated.

MR. SCHWARZ: Your Honor, since the dieticians were not a party to this election and have never seen this document before today, we can't stipulate, but we do not object to it.

JUDGE SILBERMAN: That's not adequate.

MR. SCHWARZ: Then we do stipulate.

JUDGE SILBERMAN: Very well.

The stipulation is –

MR. SPIVAK: Do I get to stipulate, too, your Honor?

JUDGE SILBERMAN: Yes.

MR. SPIVAK: Very well.

The General Union so stipulates.

JUDGE SILBERMAN: Very well.

The stipulation is accepted as part of the record in this case.

17 Mr. Spivak, please proceed.

MR. SPIVAK: I now offer the – I now ask that the document entitled "Certification of Representative" be marked as General Counsel's Exhibit 6 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 6.)

JUDGE SILBERMAN: Off the record.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

Any objection to the document identified as General Counsel's Exhibit No. 6 going into evidence?

MR. OHLWEILER: No objection.

MR. SCHWARZ: No objection.

MR. DORN: No objection.

JUDGE SILBERMAN: It is received in evidence.

(General Counsel's Exhibit No. 6 for identification, now received in evidence.)

JUDGE SILBERMAN: I wish to call attention that all the classifications which appear on the last nine lines of page one of the certification and all the classifications which appear on page 2 of the certification, are excluded catagories.

MR. SPIVAK: Okay?

JUDGE SILBERMAN: Yes.

18 MR. SPIVAK: At this time, your Honor, I would like marked for identification as General Counsel's Exhibit No. 7 for identification, an agreement made and entered into this first day of August, 1973 by and between St. Luke's Hospital Center and Local 1199.

It is actually, although it says the 1st day of August on the first page, the last page bears the signature of Jesse Olson and Charles W. Davidson, and it is really not dated on the final page, but it was signed on August 1st, of 1973.

I ask that it be marked for identification.

(Document so marked as General Counsel's Exhibit No. 7 for identification.)

JUDGE SILBERMAN: The document is being offered in evidence as a

contract which was executed on August 1, 1973?

MR. SPIVAK: That's correct.

JUDGE SILBERMAN: Do the parties so stipulate?

MR. OHLWEILER: Yes.

MR. SCHWARZ: So stipulated.

JUDGE SILBERMAN: Is there any objection to the receipt of the document in evidence?

MR. OHLWEILER: No objection.

MR. SCHWARZ: No objection.

MR. DORN: No objection.

19 JUDGE SILBERMAN: Very well.

The document will be received into evidence.

(Document so marked for identification as General Counsel's No. 7, received in evidence.)

JUDGE SILBERMAN: Now, the unit defined in this document, is that the same unit as appears in th certification, General Counsel's Exhibit 6?

MR. OHLWEILER: Your Honor, you'll find it's Stipulation one of the agreement, which is near the end just before the rates of pay, that there is a stipulation regarding the unit which specifically refers to the SLRB certification number.

So the answer to your question is yes, it does include that.

MR. SCHWARZ: However, your Honor, doesn't the contract also include other units, as well?

MR. OHLWEILER: No, not this document.

Separately negotiated and signed and later on that it was consolidated.

JUDGE SILBERMAN: Very well.

I note that appended to and as part of General Counsel's Exhibit 7 in

evidence, which is the contract between St. Luke's Hospital and Local 1199, is stipulation No. 1, which defines the bargaining unit covered by the contract, as, "The technical and professional unit as per the SLRB case No. SE-
20 4665, Decision No. 13615, dated June 21, 1973, except that" – and I understand that the exception set forth in this stipulation is immaterial to these proceedings.

Is that correct?

MR. SCHWARZ: Yes.

MR. OHLWEILER: That's correct.

JUDGE SILBERMAN: Is that correct, Mr. Spivak?

MR. SPIVAK: That's correct.

MR. DORN: That's correct, your Honor.

JUDGE SILBERMAN: Very well.

I understand General Counsel does not have a duplicate copy of General Counsel's Exhibit 7 to offer in evidence.

I will waive filing of a duplciate copy of General Counsel's Exhibit 7.

Proceed.

MR. SPIVAK: Thank you.

I now ask that this document entitled "Decision Order and Amended Certification and Amended Certification of Representative," issued by the New York State Labor Relations Board, dated May 22, 1974, be marked as General Counsel's Exhibit No. 8 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 8.)

21 MR. SPIVAK: For identification purposes, I note that there is a typed Exhibit 4 on the bottom of the page.

I ask that it be stricken.

It does not reflect any indication as to what exhibit it is in this proceeding.

JUDGE SILBERMAN: You may strike it out.

Is there any objection to the receipt of this document in evidence?

MR. SCHWARZ: No objection.

MR. DORN: No objection.

JUDGE SILBERMAN: The document is received in evidence.

(General Counsel's Exhibit No. 8 for identification, now received in evidence.)

JUDGE SILBERMAN: Off the record.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record

Upon perusing General Counsel's Exhibit 8 in evidence, I raise a question.

It would appear from this doucment, that various professional groups, in addition to dieticians, were included in the order certified by the New York State Labor Relations Board.

If the unit is inappropriate because dieticians are included in the unit, it similarly is inappropriate because other professional catagories are included in the unit.

The complaint in this case alleges violations of the Act separate and independent of the request to enforce it as against certain employees, namely, the complaint alleges that the present contract is unlawful because it applies to an inappropriate unit.

To limit the remedy under such a complaint to the dieticians alone, would seem to me to be unduly restrictive because the potential for other charges being filed in connection with the same matter exists and the Board would be remedying only part of the unfair labor practices, assuming there is any unfair labor practice; only part of the unfair labor practices, assuming there is any unfair labor practice; only part of the unfair labor practice is before it.

Accordingly, after the documentary evidence is offered in evidence – and I trust we can finish that before we recess for lunch – I wish to hear from counsel as to their position with respect to the issue I raise.

I will redefeine the issue in this way:

One, in effect, I am asking the General Counsel:

Does he wish to amend his complaint to enlarge it, to include all professional employees?

Two, if he does not, do I have jurisdiction and authority if I sustain this complaint in this very case to issue an order covering not only the
23 dieticians but all other professional catagories.

You may proceed.

MR. SPIVAK: Tahnk you, your Honor.

At this time, your Honor, I would ask that a letter dated June 7th, 1974, to Mr. Richard DeChristoford, from Mr. Daniel Ratner, be marked as General Counsel's Exhibit 9 for identification.

(General Counsel's Exhibit 9 so marked for identification.)

MR. SPIVAK: What appears to be a reply letter dated July 19, 1974, to Mr. Dan Ratner from Richard DeChristoford, be marked as General Counsel's Exhibit No. 10 for identification.

(General Counsel's Exhibit No. 10, so marked for identification.)

MR. SPIVAK: Your Honor, general Counsel's Exhibits 9 and 10 are the exchange of letters by which St. Luke's Hospital and District 1199 included or modified or extended the contract, which has been marked as General Counsel's Exhibit 7 in evidence, to include the therapeutic dieticians.

I offer it in evidence.

JUDGE SILBERMAN: And as I notice, they specifically include pharmacists?

MR. SPIVAK: Yes.

24 JUDGE SILBERMAN: Any objection to the receipt of Exhibits 9 and 10 in evidence?

MR. DORN: I have no objection.

I would like to add that by their inclusion in the contract, the dieticians received wage increases and other benefits.

JUDGE SILBERMAN: May I make a suggestion, Mr. Dorn.

First, let's devote ourselves to the documents.

Is there any objection to the receipt of General Counsel's Exhibits 9 and 10 in evidence?

MR. OHLWEILER: No objection.

MR. SCHWARZ: No objection.

JUDGE SILBERMAN: The documents are received in evidence.

Do you wish to propose a stipulation to these documents, Mr. Dorn?

MR. DORN: Yes.

I wish to propose a stipulation to the effect that by their inclusion in the collective bargaining agreement between the union and St. Luke's, the dieticians received wage increases and other benefits.

JUDGE SILBERMAN: In lieu of the stipulation suggested by Mr. Dorn, may I propose the following stipulation:

That by reason of the exchange of letters reflected by General Counsel's

25 Exhibits 9 and 10, the dieticians of the employer, St. Luke's Hospital Center, became covered by the agreement which is in evidence as General Counsel's 7.

In accordance with the terms of that agreement, whatever benefits became available to them, they received.

MR. SPIVAK: Perhaps there was objection by the parties.

My suggestion was that they were employees who objected.

Therefore, I just want the record to be clear that they were just not sitting back and enjoying all of the benefits.

JUDGE SILBERMAN: I don't understand.

MR. SCHWARZ: There were specific objections by the dieticians, for example, your Honor, to being covered by the collective bargaining agreement and being excluded, as the hospital proposed to exclude them, from, for example, the benefit programs, the health and welfare programs of the hospital.

The hospital was insisting that as a result of coverage by the contract, that they be excluded from the hospital programs and included in the union programs or the joint programs.

JUDGE SILBERMAN: And what in fact happened?

26 MR. DORN: They were included in the joint benefit and pension program.

MR. SCHWARZ: Over their objection.

MR. DORN: If they didn't object, we wouldn't be here.

JUDGE SILBERMAN: Well, I don't know that whether dieticians objected or didn't object, is material.

If there were objections to inclusion in the contract and if the subject is material, then whoever contends that matter is relevant to this proceeding, will have to adduce testimony to such effect.

But let me withdraw the stipulation I proposed, and now let me propose a different stipulation.

That General Counsel's Exhibits 9 and 10, in effect, amended the contract in evidence, General Counsel's Exhibit 7, to include the calssification of therapeutic dieticians and the — and thereafter the employer, St. Luke's Hospital Center and the union, District 1199, maintained and applied the contract to dieticians.

MR. SCHWARZ: That's agreeable, your Honor.

MR. OHLWEILER: Your Honor, one technical change.

What they actually was included in was the successor agreement to General Counsel's Exhibit No. 7, which went into effect on July 1, 1974.

JUDGE SILBERMAN: You mean 9 and 10 did that?

27 MR. DORN: Yes.

MR. OHLWEILER: That's correct.

So the rates which are reflected in 7 are not the rates which went into effect for them, they were the higher rates which went into the subsequent contract.

JUDGE SILBERMAN: I will modify my proposed stipulation in accordance with the additional information just furnished by Mr. Ohlweiler.

As so modified, do the parties join the stipulation?

MR. SPIVAK: Well, to that portion, your Honor, we would stipulate, but there's an additional — once again an additional piece of information which I feel is important, also.

We can't concede, however, that the contract application to the dieticians resulted in any improvement in their wages and benefits.

JUDGE SILBERMAN: That is why I phrased the stipulation exactly the way I did so that there should be no argument about the subject now.

If it becomes relevant, perhaps testimonial evidence will be necessary.

At the moment I don't think it's relevant.

Is the stipulation as proposed by myself and as modified by Mr. Ohlweiler, accepted?

28 MR. SPIVAK: So stipulated, your Honor.

MR. SCHWARZ: So stipulated.

MR. DORN: So stipulated.

JUDGE SILBERMAN: Very well.

The stipulation is received as part of the record in this proceeding.

Please proceed, Mr. Spivak.

MR. SPIVAK: At this time, your Honor, i ask that a document entitled "Collective Bargaining Agreement Between League of Voluntary Hospitals and Homes of New York and District 1199, National Union, Hospital and Health Care Employees, RWDSY, AFL-CIO, 1974-1976 "bearing the name St. Luke's Hospital Center, be marked as General Counsel's Exhibit 11 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 11.)

JUDGE SILBERMAN: Is this document being offered in evidence?

MR. SPIVAK: Yes, your Honor it is.

JUDGE SILBERMAN: Any objection?

MR. DORN: No objection.

MR. SCHWARZ: No objection.

MR. OHLWEILER: No objection.

JUDGE SILBERMAN: The document is received in eivdence.

29

(General Counsel's Exhibit No. 11 for identification, now received in evidence.)

JUDGE SILBERMAN: What is the significance of this document?

MR. SPIVAK: This is the successor agreement which you heard about, subsequent to the exchange of letters, the new contract was drawn up which incorporated the dieticians as part of this contract.

JUDGE SILBERMAN: Where does that appear in the document?

MR. SPIVAK: The next difficulty is that —

JUDGE SILBERMAN: My question is, where does it appear in the document?

MR. SPIVAK: It does not appear exactly in the document.

The document is supposed to have stipulations which have not as yet been completely executed ans so they have not been fully made part of the document.

However, the parties have indicated that this is the document pursuant to which the request for the discharge occurred.

This is the document which they used in the proceeding involving the therapeutic dieticians.

MR. SCHWARZ: Your Honor, you'll note on the back of the book, the signatories to the contract are members of the League of Voluntary Hospitals.

30 I believe, if I may, Schedule A of the agreement, lists St. Luke's Hospital Medical Center as being one of the signatories to the agreement.

In Schedule 2 of the agreement, your Honor — I'm sorry — Schedule 2-A of the agreement, your Honor, you will notice a list of covered classifications.

Among those classifications, you will note generalized classification —

JUDGE SILBERMAN: Where is Schedule 2-A, what page?

MR. OHLWEILER: 49, your Honor.

JUDGE SILBERMAN: Page 49?

MR. SCHWARZ: Yes.

JUDGE SILBERMAN: Very well.

Continue with your argument.

MR. SCHWARZ: Okay.

You will notice the various classifications that are covered by the general contract.

The body of the agreement in paragraph — under the wage section of the agreement, states that the individual signatories to the agreement shall negotiate Schedule 2, which applies the various classifications and specific classifications within the hospital to the agreement.

We have been informed that to date the hospital and the union have not

31 negotiated Schedule 2 to their specific agreement and that that is in the process of being done.

However, I offer the stipulation that they are at the present time and did as of July 1st, apply this collective bargaining agreement to all of the bargaining units which were covered as of July 1 by any previous agreement with Local 1199.

JUDGE SILBERMAN: If I may restate it:

Will the parties stipulate that the unit of employees covered by the contract identified as General Counsel's Exhibit 11, is the same unit which was covered in General Counsel's Exhibit 7 as amended or supplemented by General Counsel's Exhibits 9 and 10?

MR. OHLWEILER: For clarification, your Honor, there is an additional unit, a service unit in the hospital, also represented by District 1199 and also included in the scope of this unit.

So it's two units which are included in this.

JUDGE SILBERMAN: What do you mean by —

MR. OHLWEILER: But it also includes the technical and professionals.

JUDGE SILBERMAN: I don't understand what you're saying.

MR. OHLWEILER: That wasn't clear.

There are two units, two separately certified bargaining units at St. Luke's
31 Hospital Center which are both represented by Local 1199.

One is the technical and professional unit that we're dealing with here; the second is the service unit, which we are not dealing with here, your Honor.

Both of them would be in a stipulation one to this document (indicating).

JUDGE SILBERMAN: Very well.

In other words, what you are saying is that this document — and by this document — well, let me restate it.

The parties will stipulate that the unit covered by General Counsel's Exhibit 11, including one, a unit of service employees previously certified by

the State Labor Relations Board and, two, the unit of employees covered in General Counsel's Exhibit 7, as amended or supplemented by General Counsel's Exhibits 9 and 10.

MR. DORN: That's correct.

MR. OHLWEILER: That's correct.

JUDGE SILBERMAN: Do the parties so stipulate?

MR. DORN: So stipulated.

MR. OHLWEILER: So stipulated.

MR. SPIVAK: So stipulated.

MR. SCHWARZ: So stipulated.

JUDGE SILBERMAN: Very well, the stipulation is accepted as part of the record.

33 Will you provide another copy of General Counsel's Exhibit 11?

MR. SCHWARZ: Yes.

JUDGE SILBERMAN: Very well.

Please do so before the hearing closes.

MR. SPIVAK: At this time, your Honor, I request that a letter dated October 16, 1974, to Mr. Richard DeChristoford from Mr. Jesse Olson, be marked as General Counsel's Exhibit 12.

(Document so marked for identification as General Counsel's Exhibit No. 12.)

MR. SPIVAK: A memorandum to Robert Nelson from Richard DeChristoford, dated October 18, 1974, be marked for identification as Exhibit 13.

(Document so marked for identification as General Counsel's Exhibit No. 13.)

MR. SPIVAK: And a letter from Mr. Richard Dorn to Mr. John Ohlweiler, dated March 25, 1975, be marked for identification as General Counsel's Exhibit 14, for identification.

(Document so marked for identification as General Counsel's Exhibit No. 14.)

JUDGE SILBERMAN: Any objection to the receipt of Exhibits 12, 13 and 14 into evidence?

MR. DORN: No objection.

34 MR. OHLWEILER: No objection.

MR. SCHWARZ: No objection.

JUDGE SILBERMAN: Very well.

The documents are received in evidence.

(General Counsel's Exhibits 12, 13 and 14 for identification, now received in evidence.)

MR. SPIVAK: At this time, your Honor, we are up to the point in the proceeding at which we can stipulate to the underlying facts regarding the professional status of the —

JUDGE SILBERMAN: Well, before you do so, Mr. Spivak, I think it would be appropriate to specifically indicate whether or not any of the persons whose discharges were demanded, were in fact discharged.

MR. SPIVAK: Our understanding is that no one has been discharged.

MR. SCHWARZ: That's correct, your Honor.

MR. OHLWEILER: That's correct, your Honor.

JUDGE SILBERMAN: Will the parties so stipulate?

MR. SPIVAK: So stipulated.

MR. SCHWARZ: So stipulated.

MR. DORN: So stipulated.

MR. OHLWEILER: So stipulated.

JUDGE SILBERMAN: Very well.

The stipulation is accepted as part of the record.

35 You now wish to introduce documents to support the stipulation entered into by the parties that the dieticians are professional employees within the meaning of the Act?

MR. SPIVAK: That's correct, your Honor.

JUDGE SILBERMAN: Very well.

MR. SPIVAK: Initially, your Honor, I would ask that the parties stipulate that the American Dietetic Association is a professional organization for establishing educational and supervised clinical experience requirements and standards of practice in the profession of dietetics.

MR. SCHWARZ: So stipulated.

MR. DORN: I can't stipulate to that because I do not have sufficient information about the American Dietetic Association to enter into such a stipulation.

MR. SPIVAK: Can the parties stipulate that there is an association which in fact sets criteria for certification and registration of dieticians as therapeutic dieticians?

JUDGE SILBERMAN: Well, why don't you skip that point?

MR. SPIVAK: Okay.

JUDGE SILBERMAN: As the parties don't dispute the fact that the dieticians are professional employees, I think the balance of your documents will be sufficient to support the thesis.

36 MR. SPIVAK: Okay.

I ask that this document entitled "Requirements for Membership in the American Dietetic Association," which bears the date, Executive Board Action, February, 1973, be marked for identification as General Counsel's Exhibit 15 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 15.)

JUDGE SILBERMAN: Any objection?

MR. OHLWEILER: That's this document (indicating)?

MR. SPIVAK: Yes.

MR. OHLWEILER: This is from what, may I ask?

MR. SPIVAK: This is from — this is a copy of the resolution as passed by the American Dietetic Association.

MR. SCHWARZ: In February, 1973.

You will note that at the top of the page, counsel.

MR. OHLWEILER: Yes.

I have no objection.

MR. DORN: No objection.

JUDGE SILBERMAN: Very well.

The document is received in evidence.

(General Counsel's Exhibit No. 15 for identification, received in evidence.)

MR. SPIVAK: I would also like a two-page computer readout sheet —

37 MR. SCHWARZ: 16.

MR. SPIVAK: The top name on the sheet is Rachel Arroganti and on the balance of the left-hand side it bears the designation as "Salary for search code designation."

I ask that it be initially marked for identification as General Counsel's Exhibit 16 so that I might explain what it is.

(Document so marked for identification as General Counsel's Exhibit No. 16.)

JUDGE SILBERMAN: Would you explain what this document is?

MR. SPIVAK: General Counsel's Exhibit No. 16 was prepared, your Honor, pursuant to a conversation which we had at the pre-trail meeting that we had in this case.

The parties at that time felt that it might be necessary to establish what the educational and what the work experience was of the therapeutic dieticians.

I requested that the employer go through his records and indicate on a sheet of paper, what the background was of the therapeutic dieticians that are in dispute in this proceeding, to determine whether or not they were professional employees.

I spoke with Mr. Jim Cleary, Employee Labor Relations Manager, at St. Luke's, and this information is the culmination of his information and
38 search of the records of the employees that are classified as dieticians.

Now, the first column bears — well, the relevant portion for which it is being offered, there are names of employees on the left-hand side of the sheet, last name, first name.

There is also, your Honor, an indication, I would say in around the 7th column, there are two designations; there's ADA and RD designation.

Now, the ADA designation indicates that the employee has complied with the requirements of General Counsel's Exhibit 15 and, therefore, is a member of the ADA.

MR. OHLWEILER: It indicates that they are a member of the ADA, if I may clarify it.

MR. SPIVAK: Okay.

And membership in the ADA will be further explained by General Counsel's Exhibit 15.

The designation RD is that the employee, in addition to being a member of ADA, is a registered dietician.

The criteria for registered dietician, I propose a stipulation being that there be membership in ADA passing a state — passing a further examination and then continuing educational requirements to become a registered dietician.

JUDGE SILBERMAN: Will the parties stipulate that that is correct?

39 MR. OHLWEILER: There's an examination administered by the Association, that is, the American Dietetic Association.

MR. SCHWARZ: That's correct.

MR. OHLWEILER: And there are continuing educational requirements.

JUDGE SILBERMAN: In other words, to be a registered dietician, an individual must be a member of the American Dietetic Association, must pass a test and must pursue certain continuing educational requirements; is that correct?

MR. SCHWARZ: That is correct.

MR. OHLWEILER: That is correct.

JUDGE SILBERMAN: Very well.

That statement will be accepted as part of the record in this case.

MR. SPIVAK: The additional column entitled "BS," stands for a Bachelor of Sicence.

It indicates the educational requirements — the educational accomplishments of each of the employees and the field of study.

For those who have the MS after the specialty in which they received their BS, it indicates that they also received a master's degree in the related field.

40 The final column is the date that the employee was hired.

JUDGE SILBERMAN: Very well.

Any objection to General Counsel's Exhibit 16 being received into evidence at this time?

MR. OHLWEILER: No objection.

MR. DORN: No objection.

MR. SCHWARZ: No objection.

JUDGE SILBERMAN: There being no objection, General Counsel's Exhibit 16 is received in evidence.

(General Counsel's Exhibit No. 16 for identification, now received in evidence.)

JUDGE SILBERMAN: Is it clear that the names on this document are the dieticians employed at St. Luke's Hospital?

Is that correct?

MR. SCHWARZ: We will stipulate that.

MR. OHLWEILER: That's correct.

MR. DORN: Yes.

JUDGE SILBERMAN: Very well.

That statement will be accepted as a stipulation in this proceeding.

MR. SPIVAK: In addition, your Honor, I would also propose a stipulation that for those employees who are not ADA members currently, they are currently pursuing such certification.

41 MR. OHLWEILER: I can't really stipulate to that because I don't know that —

MR. SPIVAK: Well, I have the job descriptions which will state —

JUDGE SILBERMAN: Very well.

MR. SPIVAK: I will withdraw the offer of the stipulation, your Honor.

I ask that a job description, job title therapeutic dietician, be marked as General Counsel's Exhibit 17 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 17.)

MR. SPIVAK: And a job description entitled "clinic dietician" be marked as General Counsel's Exhibit 18 for identification.

(Document so marked for identification as General Counsel's Exhibit No. 18.)

MR. SPIVAK: I will offer them in evidence, at this time.

JUDGE SILBERMAN: As what?

MR. SPIVAK: As the job description for two of the three positions in dispute.

JUDGE SILBERMAN: At St. Luke's?

MR. SPIVAK: Yes.

JUDGE SILBERMAN: Very well.

42 Any objections?

MR. OHLWEILER: No objection.

MR. DORN: No objection.

MR. SCHWARZ: No objection.

JUDGE SILBERMAN: Very well.

General Counsel's Exhibits 17 and 18 are received into evidence.

(General Counsel's Exhibits 17 and 18 for identification, now received in evidence.)

MR. SPIVAK: At this time, your Honor, I would also propose a stipulation that General Counsel's Exhibit 13, which has been put in evidence already, pursuant to the allegations of the complaint, I would like to stipulate that this particular memorandum was distributed to the employees and they were so notified that they would be required to join the union.

JUDGE SILBERMAN: Will the parties join in this stipulation?

MR. OHLWEILER: One moment, your Honor.

To the extent that the stipulation is that this document was distributed to the dieticians involved, that is correct.

JUDGE SILBERMAN: Very well.

MR. SCHWARZ: So stipulated.

JUDGE SILBERMAN: Mr. Dorn?

43 MR. DORN: Upon Mr. Ohlweiler's assertion, I will so stipulate.

JUDGE SILBERMAN: Very well.

The stipulation is accepted as part of the record.

MR. SPIVAK: At this time, your Honor, General Counsel rests.

JUDGE SILBERMAN: No, I will not accept that statement.

After lunch you may rest if you wish to.

I wish to consider the question of the amendment to the complaint in accordance with my suggestion previously.

MR. SPIVAK: Yes, your Honor.

JUDGE SILBERMAN: However, as that represents all the evidence General Counsel wishes to adduce, is there any evidence that the respondent wish to adduce?

And I think it would be helpful if it was done before we recess for lunch.

MR. DORN: Well, your Honor, I'll offer two documents into evidence at this time.

Would you please mark these as District 1199's Exhibits 1 and 2 for identification.

MR. DORN: I offer as District 1199's Exhibit 1, a list of classifications which the union deems to be professional and the employees — and the number
43 o of employees in each classification employed at St. Luke's Hospital at this time.

(Both documents so marked for identification as District 1199's Exhibits 1 and 2.)

JUDGE SILBERMAN: Off the record.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

Are you able to agree on that?

MR. SCHWARZ: Yes.

JUDGE SILBERMAN: Is there any objection to District 1199's Exhibit 1 be received in evidence?

MR. SCHWARZ: 1 is the list?

JUDGE SILBERMAN: Yes.

MR. SPIVAK: No objection.

MR. SCHWARZ: No objection.

MR. OHLWEILER: No objection.

JUDGE SILBERMAN: Very well.

District 1199 Exhibit No. 1 is received in evidence.

JUDGE SILBERMAN: Mr. Dorn, what does District 1199's Exhibit 2 purport to show and why is it relevant in this proceeding?

MR. DORN: That is an arbitration decision by Arbitrator Morris Glushien in an arbitration between the hospital and the union.

45 In this case the arbitration was commenced by District 1199 seeking the discharge of the dieticians because of their failure to join the union as compelled by the union's security clause of the agreement.

Arbitrator Glushien in the course of his decision discussed the very issues that we are discussing in this case.

I think it, therefore, relevant, and I believe that the Board should defer to that award.

But in any event, it certainly should be before you or the Board for its purusal.

JUDGE SILBERMAN: In any event, as I recall your answer, District 1199 affirmatively requested the Board to defer all proceedings in this matter to the arbitrator, Mr. Glushein; is that correct?

MR. DORN: That's correct.

JUDGE SILBERMAN: And for no other reason, it is relevant to support that part of your answer?

MR. DORN: Yes.

JUDGE SILBERMAN: Any objection?

MR. SPIVAK: Yes.

I think it would be grossly misleading to have just a decision, your Honor, without knowing who represented the interests of the employees, how the matter came to litigation, what led up to the filing of the grievance and
46 what the actual issue was, because I believe there may be a question as to what the actual issue was before Mr. Glushein.

JUDGE SILBERMAN: It doesn't appear in this decision?

MR. SCHWARZ: I do not recall it does, your Honor.

MR. SPIVAK: That's correct, your Honor.

My understanding is that he may very well have gone beyond what he was asked to decide originally.

If they are offering this as an affirmative defense, I would request that they put all of the evidence before us and not just the decision.

MR. SCHWARZ: Your Honor, I would further like to ojbect on the grounds that while I stipulate that that is the arbitration award —

JUDGE SILBERMAN: Rather, it's not an award, it's the opinion rendered by Arbitrator Glushein.

MR. SCHWARZ: I believe it also contains his award.

JUDGE SILBERMAN: Well, I haven't read it, but the last page states, "For the reasons stated in the accompanying opinion, I deem it inappropriate to issue a final award at this stage."

MR. SCHWARZ: I see.

JUDGE SILBERMAN: "I am retaining jurisdiction with leave to either party to renew the proceedings when the NLRB administrative judge has rendered his decision or when there has been some other decision of the National Labor Relations Board case."

47 MR. SCHWARZ: Well, sir, again I stand corrected.

What he did there was that he ordered a continuance of his jurisdiction, which is — without going into whether or not that's a valid thing or not.

The question here, your Honor, is this:

The union in pursuit of its rights under the collective bargaining agreement, brought the hospital to arbitration seeking to ascertain if there was a violation of the collective bargaining agreement because the hospital did not discharge the individual employees.

The Arbitrator, I think, is quite wrong in what he talks about.

He does not have the power to discharge anybody.

The only thing that he can find is whether or not there was or was not a violation of the contract by the hospital in refusing to discharge as it had agreed to under the collective bargaining agreement.

Now, we maintain that — in this proceeding that that collective bargaining agreement is thoroughly relevant — I'm sorry, the collective bargaining agreement and the entering into that collective bargaining agreement and the union security clause which the union attempted to enforce in the arbitration proceeding, your Honor, was a violation of the Act.

48 Arbitrator Glushein had merely one question before him and could only have one question before him, and that question is:

Was there a contract?

Did it contain a union security clause?

Did these individuals refuse to join?

Were they a member of the unit covered by the collective bargaining agreement?

Did the hospital violate the contract?

All of that begs the question in this proceeding because the question in this proceeding is:

Did the hospital have a right to enter into a contract covering these employees?

Did they have a right to enter into a union security clause?

Did they in fact properly under the Act, threaten to fire the individuals who were covered by that union security clause, that is, the dieticians?

That is the question in this proceeding, your Honor.

If Arbitrator Glushein, in effect, trying to extend his jurisdiction to that of being General Counsel's emeritus or Regional Director of the National Labor Relations Board, renders an opinion as to what he thinks the National Labor Relations Board should do in a representational proceeding, that is a matter which is entirely relevant to this proceeding and should not be considered.

JUDGE SILBERMAN: Very well.

I notice that the answer filed by District 1199 in paragraphs 15 through 17, which are headed, "fourth Affirmative Defense," assert as an affirmative defense for this proceeding and the arbitration, that by reason of the arbitration proceeding, the Board should defer its jurisdiction in this matter to the arbitration proceeding.

Without deciding the merits of this defense, I find that the document identified as District 1199's Exhibit 2 is relevant to the fourth affirmative defense alleged in the answer to Disctrict 1199, and, therefore, I overrule the objections and receive the document in evidence.

(District 1199's Exhibits land 2 for identification, now received in evidence.)

JUDGE SILBERMAN: Now, of course, it's the objection of District 1199 to put in all necesary evidence to establish its defense in this respect, or if this is the only evidence being offered in support of the defense, I will consider it as such.

Is there anything else to be added at this time?

MR. SPIVAK: Well, your Honor, I would at this time, in view of the
50 fact that you have accepted the document over our objection, in evidence, I would propose the stipulation that no dieticians were notified that there would be an arbitration proceeding.

I would also pose a stipulation that neither party represented the interests of the individual dieticians at this proceeding, they were not represented by counsel or individually and they were not, of course, represented as a group by counsel and that the only parties to the arbitration were the union and St. Luke's Hospital.

MR. DORN: I will stipulate that the only parties to the proceeding were St. Luke's and District 1199.

I will also stipulate that the dieticians did not appear at the arbitration proceeding.

JUDGE SILBERMAN: Will you also stipulate that no formal notice of the arbitration was served upon any of the dieticians or their representative?

MR. DORN: I don't know if that is a fact or not.

MR. OHLWEILER: I did not know whether that is a a fact or not.

MR. SPIVAK: You served notice on the hospital, did you also serve notice on the dieticians when you served notice of the intention to arbitrate?

MR. OHLWEILBER: I didn't say anybody served any notice or did not serve any notice.

I said I do not know whether the dieticians were informed of the arbitration.

51 MR. SCHWARZ: That wasn't the question.

JUDGE SILBERMAN: Let's take it in stages.

Will the parties stipulate to the proceeding before Arbitrator Glushein with St. Luke's Hospital Center and District 1199?

MR. OHLWEILER: Yes.

JUDGE SILBERMAN: Mr. Dorn?

MR. DORN: Yes.

MR. SCHWARZ: Yes.

MR. SPIVAK: Yes, your Honor.

JUDGE SILBERMAN: The stipulation is accepted as part of the record.

Now, no evidence has been offered as to how this proceeding was initiated.

May I suggest, if it's relevant, that during the recess, that the parties reach a stipulation as to that?

MR. SPIVAK: Yes

JUDGE SILBERMAN: We'll offer it after the recess.

Is there any other – are there any other documents to be offered?

MR. DORN: I have no other documents.

JUDGE SILBERMAN: Off the record.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

52 MR. DORN: With regard to Union's Exhibit No. 1, your Honor, I would like to offer a stipulation that all of the employees in the classification listed, with the exception of the dieticians, are members of District 1199 and have been paying dues to the District 1199 since at least August of 1974.

MR. SCHWARZ: I can't stipulate to that.

JUDGE SILBERMAN: Well, you'll have to – if you feel that matter is relevant, as the parties will not stipulate to it, you'll have to adduce evidence to establish the fact.

MR. DORN: Okay.

JUDGE SILBERMAN: Off the record, please.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

The hearing will be recessed until 3:30 p.m.

(Time noted: 1:30 p.m.)

53 AFTERNOON SESSION

(Time noted: 4:00 p.m.)

JUDGE SILBERMAN: On the record.

MR. SPIVAK: At this time, your Honor, I would ask that you mark for identification, General Counsel's Exhibit 19, which is a letter to the American Arbitration Association from Harry Weinstock, dated January 24th, 1975, with a carbon copy to St. Luke's Hospital.

JUDGE SILBERMAN: What date?

MR. SPIVAK: January 24th, 1975.

JUDGE SILBERMAN: Very well.

(Document so marked for identification as General Counsel's Exhibit No. 19.)

MR. SPIVAK: I propose a stipulation, in addition to the admission of the document into evidence, that this was a letter sent by Mr. Weinstock, as representative of District 1199, which initiated an arbitration, which has been referred to by counsel for District 1199.

It indicates to whom the letter was sent and who received a carbon copy of the letter.

In addition, there was a subsequent notice of hearing pursuant to the letter.

JUDGE SILBERMAN: Which was directed only to –

MR. SPIVAK: To the parties –

JUDGE SILBERMAN: – St. Luke's Hospital and District 1199?

54 MR. SPIVAK: Yes.

JUDGE SILBERMAN: Very well.

First, do the parties join in the stipulation?

MR. SCHWARZ: Yes.

MR. OHLWEILER: So stipulated.

JUDGE SILBERMAN: Very well.

MR. DORN: So stipulated.

JUDGE SILBERMAN: The stipulation is received in evidence.

Is there any – and made part of this record.

And is there any objection to the document indentified as General Counsel's Exhibit 19?

MR. DORN: No objection.

MR. OHLWEILER: No objection.

MR. SCHWARZ: No objection.

JUDGE SILBERMAN: Very well.

The document is received in evidence.

(General Counsel's Exhibit No. 19 for identification, now received in evidence.)

MR. DORN: Your Honor, I propose a stipulation at this time that St. Luke's Hospital is currently checking off and submitted dues to District 1199 for all employees in the classifications listed on Local 1199's Exhibit 1, with the exception of dieticians, and has been doing so at least since Sep-
55 tember, 1974.

JUDGE SILBERMAN: You join in the stipulation?

MR. SPIVAK: Yes, your Honor.

MR. SCHWARZ: So stipulated.

MR. OHLWEILER: Yes, so stipulated, your Honor.

JUDGE SILBERMAN: Very well.

The stipulation is accepted as part of the record.

MR. SPIVAK: At this time further, your Honor, in light of our discussion this morning and your question which was posed to the General Counsel, I propose to amend the complaint.

I would move to amend paragraphs after the word "dieticians," after – starting from – well –

JUDGE SILBERMAN: Off the record, please.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

MR. SPIVAK: I would add after the word "dieticians," at the very end of paragraph 6, I would add the words, "Pharmacists, pharamcist interns and dental hygienists."

That's the end of the amendment.

These are positions which have been stipulated as professional employees, as listed on Union's Exhibit 1.

JUDGE SILBERMAN: Would you repeat again, pharmacists, pharmacist interns and what's the last one?

56 MR. SPIVAK: And dental hygienists.

JUDGE SILBERMAN: Very well.

MR. SPIVAK: Also, paragraph 8 after the word "dieticians," also to include pharmacists, pharmacist interns, and dental hygienists," in the unit.

Paragraph 9, after the word, "dieticians," I would add" pharmacists, pharmacist interns and dental hygienists."

Paragraph 10, after the word "dieticians," which is on the – after the word, paragraph 6, "therapeutic dieticians, pharmacists pharmacist interns, dental hygienists, notwithstanding the fact that such employees were not afforded an opportunity to vote for inclusion in the unit described above in paragraph 6."

JUDGE SILBERMAN: Just one moment.

MR. SPIVAK: Yes, sir.

JUDGE SILBERMAN: Please continue.

MR. SPIVAK: Yes, sir.

JUDGE SILBERMAN: Please continue.

MR. SPIVAK: Paragraph 11, after "dieticians," again dieticians, pharmacists, pharmacist interns, dental hygienists."

Paragraph 13, after "dieticians," pharmacists, pharmacist interns, dental hygienists."

JUDGE SILBERMAN: Do you wish to explain your motion?

MR. SPIVAK: Yes.

These motions, your Honor, as raised in the defense and as discussed this morning, are positions which were stipulated to be professional employees 57 within the meaning of the Act.

As regarding the certain allegations of the complaint relating to the unlawful existence of an agreement, these are also the positions of employees who were added to the unit over their objection by the decision of the State Board on May 22nd, 1974.

These are the positions that were added as a result of the amended certification which were not included in the original certification.

It would be appropriate to add these positions in the complaint.

JUDGE SILBERMAN: If I understand your position, Mr. Spivak, it is this:

Your contention is that the respondent's activities have been unlawful, as set forth in the complaint, only with respect to such professional employees who indicated an objection to being included in the unit and other professional employees such as social workers who did not indicate an objection to being included in the unit, your position is that the unit is lawful as to them?

MR. SPIVAK: Well, I don't think that is entirely accurate.

As to other employees such as occupational therapists, your Honor, there's an additional problem of the statutory limitations, that the agreement in 58 which they were included is the August 1973 agreement.

So that they were initially put into the unit as of that date.

Therefore, to find a violation with regards to them would be beyond the 10-B period.

JUDGE SILBERMAN: What is the date of the agreement, General Counsel's Exhibit 11?

That's the last agreement, I believe.

MR. OHLWEILER: July 1974.

JUDGE SILBERMAN: There's no more specific date?

MR. OHLWEILER: That's July 1st, I believe.

JUDGE SILBERMAN: July 1st, '74?

MR. SPIVAK: Hold on a second.

It was signed the 26th.

MR. DORN: Effective July 1st.

JUDGE SILBERMAN: Signed July 26th, effective retroactively to July 1st; is that correct?

MR. SPIVAK: Yes.

MR. SCHWARZ: It actually wasn't agreed upon until the 26th.

MR. OHLWEILER: I don't know how you define the term.

MR. SCHWARZ: We say it wasn't actually agreed upon because that con-

59 tract was mandated by the Impass Panel appointed by the Governor of New York State.

JUDGE SILBERMAN: Now, you confuse me.

Do I have to get into that question?

MR. DORN: No.

MR. SCHWARZ: No.

JUDGE SILBERMAN: For the purpose of this case, can I accept the fact that that agreement was executed on the 26th of July, effective as of July 1, 1974?

Is that correct, yes?

MR. SPIVAK: Yes.

MR. SCHWARZ: Yes.

MR. DORN: Yes.

MR. OHLWEILER: Yes.

JUDGE SILBERMAN: Very well.

I want to understand your position, Mr. Spivak.

You say there's no violation with respect to General Counsel's Exhibit 11 insofar as professional employees other than the categories you mentioned are included, and your reason that there is no violation is that they were first included in a bargaining unit in the contract of 8/1/73 and more than six months have passed therefore, Section 10-B bars any question as to the appropriateness of the unit.

That's your position?

60 MR. SPIVAK: The recognition is what is the – the initial recognition of that unit.

JUDGE SILBERMAN: Well, therefore, what you are in effect saying that if we are talking about how long it takes to establish an inappropriate unit so that it can be not questioned, the answer is six months.

Is that correct?

MR. GREEN: It depends what kind of a proceeding it is.

JUDGE SILBERMAN: Mr. Green, the Reporter takes down everything that is said in the hearing room.

If you wish to appear and argue or voice opinions, I'll be happy to permit you to appear and do so.

If all you wish to do is to consult with Mr. Spivak, let's go off the record for that.

MR. GREEN: Yes, sir.

JUDGE SILBERMAN: Off the record.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

Do you wish to offer any further explanation with regard to your motion?

MR. SPIVAK: Well, in response to your question, which I believe is still outstanding, your Honor, I –

JUDGE SILBERMAN: Well, my question is:

How do you explain your amendment, because you are not seeking to
61 exclude all the professional employees.

MR. SPIVAK: With regard to those professional employees, for the purpose of this proceeding in an unfair labor practice case as beyond the attack because of the 10-B prescription, in another proceeding perhaps the 10-B would obviously not be a bar, perhaps in an RC or in an RD position.

We take no position at this time as to whether or not it would be a bar of that case; for the purposes of this proceeding, since the recognition of those employees who might or might not be professionals occurred beyond the period of 10-B, we do not attack the agreement as it relates to them.

JUDGE SILBERMAN: In connection with the motion, do you state any position, Mr. Schwarz?

MR. SCHWARZ: Well, sir, our position in filing this charge and in initiating these proceedings, was to protect the individual rights of the dieticians.

We did not and do not solicit the opinions or what the opinions of other categories are.

We, also, maintain, though, as far as this amendment is concerned, that that is really irrelevant to the charge which we have filed.

JUDGE SILBERMAN: Very well.

Is there any opposition to the motion?

62 MR. DORN: Yes, your Honor, there is.

I oppose the motion on behalf of District 1199.

In the first place, your Honor, the charges in this case were filed by the dieticians and by the dieticians alone.

No other classification of employee filed any charge in this case.

As we have already seen, all of the employees can be considered professionals, have been paying dues and have been members of the union at least since September 1974.

I believe the amendment is, therefore, barred by 10-B in its entirety.

There can be no relation back here because there was no indication that any other classification of employee desired to opt out of the union.

In fact, your Honor, paragraphs 14 and 15 of the complaint obviously pertain only to dieticians because the union only made a demand that dieticians be discharged because of their failure to join the union since all the other professionals had already joined.

Therefore, your Honor, we maintain that the amendment is barred by 10-B.

In addition –

JUDGE SILBERMAN: Just one moment.

I want the facts clear in my mind.

63 As of the August 1, 1973 contract, the pharmacists, pharmacist interns and dental hygienists were not covered by the contract.

Is that correct?

MR. DORN: That's correct.

JUDGE SILBERMAN: The first time they became covered by the contract was approximately June 19th, 1974?

Is that correct?

MR. DORN: That's correct.

JUDGE SILBERMAN: Now, the first charge in this matter was filed on –

MR. DORN: October '74.

JUDGE SILBERMAN: -- October '74, which is less than six months after the contract was applied to the pharmacists, pharmacist interns and the dental hygienists.

So now, Mr. Dorn, how do you contend that 10-B is a bar?

MR. DORN: Because the charge was not filed on behalf of the pharmacists or the pharmacist interns or dental hygienists, it was only filed on

behalf of the therapeutic – on behalf of the dieticians, as Mr. Schwarz concedes.

I think also the General Counsel –

JUDGE SILBERMAN: What your argument is is this:

That for purposes of 10-B, the interpretation is limited to the language of the contract.

64 MR. DORN: Well –

JUDGE SILBERMAN: In other words, let's give a hypothetical.

Let's assume an employer unlawfully discharged five employees at the same time.

One of the five files a charge and it is not until 10-B expires that charges are filed on behalf of the other four.

Quiry: Is 10-B able to bar a complaint for all five?

Now, your argument would be that 10-B would bar a complaint for four of them.

MR. DORN: I am aware that the Board has a relation-back doctrine, but that applies –

JUDGE SILBERMAN: Not only the Board, I recall the Supreme Court iterating such a doctrine.

MR. DORN: That's correct.

That depends on the facts in each situation.

Here, your Honor, we have no warning that any other group desired to opt out of the contract, no other group has filed a charge, no other group has filed a charge to date.

It was only based on your suggestion that now for the first time the General Counsel decides that he wants to get the others out of the contract.

JUDGE SILBERMAN: Very well.

65 MR. DORN: The others haven't filed a charge to this date.

There's no indication that they are dissatisfied at all.

Moreover, your Honor, I also would object because I think it's improper and inappropriate to bifurcate the professionals in this bargaining unit.

Union's Exhibit 1 lists all of the professionals.

Just, as an example, you have social workers and senior social workers who constitute 36 employees, at least 36 at this date, which is far more than the dieticians.

And yet, as the General Counsel concedes, he can't amend the complaint to include social workers because of 10-B.

If you are going to have a remedy which includes either an election or an opting out for professionals, there has to be an overall professional unit.

I think the Board in the Mercy Hospital case recently indicated that with some exceptions.

And since no charge has been filed on behalf of the other professionals and since they are clearly beyond the 10-B period, I think it would be improper to bifurcate this unit and to destroy, in effect, a collective bargaining agreement for professionals who have no desire, at least no desire that we know of, to opt out of this contract.

66 JUDGE SILBERMAN: Do you have any position?

MR. OHLWEILER: The hospital has nothing to add to what Mr. Dorn said, but we do join with him in his position with regard to this amendment.

We do not think it is appropriate, your Honor.

MR. SCHWARZ: Sir, there are certain things, though, that have to be said.

The individual professionals of whom we are speaking, your Honor, which are listed here on the Respondent's Exhibit 1, joined the union and did sign checkoff cards.

But again, as I say, under the pressure and under the coercion of the union security clause, did they so sign?

They have not opted out – I hear Mr. Dorn talking about opting out of a professional unit.

However, you can't say that because they signed a card and signed a checkoff, became a member of the union, became subject to union discipline if they ever filed a charge against the union, we can now look at that act and say that if they had been given an opportunity to vote, which they were never given by the Board, by the State Board, they would have voted in that laboratory or quasi-laboratory condition, they would have expressed their view then as they do now by having signed a card and joined the union under the coercion of the union security clause.

67 Bifurcation, these are not all of the professionals who are up in that hospital.

There are RN's, there are LPNs who are represented separately; there are doctors; there are interns; there may be a multitude of other professionals up at that hospital who if this Board were looking at the formation of appropriate professional bargaining unit, would include in the bargaining unit.

MR. DORN: May I reply to that briefly, just very briefly?

JUDGE SILBERMAN: Yes.

MR' DORN: Mr. Schwarz indicates that these employees were coerced into joining the union because of the union's security clause.

That, of course, is a conclusion.

And since the only way we have of knowing if they were dissatisfied is the fact that they either filed or did not file a charge, I think we have to assume that they are in some way satisfied.

Moreover, your Honor, a majority of the professionals on this list, Union 1, voted in an individual election, they didn't file petitions separately.

If we are going to have a vote among the professionals, I think you have to assume that the majority did want the union.

68 JUDGE SILBERMAN: Let me make some observations before I rule.

MR. SPIVAK: Can I get one more shot, your Honor?

JUDGE SILBERMAN: Yes.

MR. SPIVAK: Briefly.

JUDGE SILBERMAN: Yes.

MR. SPIVAK: Just in response to Mr. Dorn's statement, whether or not actual coercion was shown by General Counsel, the Board has held that the mere existence of the unlawful union security clause, even where it is lawful on its face, without an absent enforcement and maintenance, is still a violation.

JUDGE SILBERMAN: One of the issues, if not the only issue to be decided in this case, is:

In what circumstances may a unit agreed upon between the parties which the Board would find inappropriate if presented with such unit in a representation case, would be deemed valid when attacked in an unfair labor practice proceeding.

I've merely defined the principal issue in this case.

Isn't that a fair definition?

MR. SCHWARZ: With one exception, your Honor.

JUDGE SILBERMAN: What is that?

MR SCHWARZ: Okay, agreed upon between the parties.

69 This unit was not agreed upon by the parties.

JUDGE SILBERMAN: By the parties, I mean the employer to a collective bargaining agreement and a union to the collective bargaining agreement.

MR. SCHWARZ: Sir, the union and the employer originally agreed that there should be a separate determination made among these individual professionals.

It was the State Labor Board who created this unit.

JUDGE SILBERMAN: But the fact of the matter is, Mr. Schwarz, whatever the background was, the employer and the union, as of the times of GC-10, June 19, 1974, entered into a contract covering the professionals as well as the technical employees, including the dieticians.

So as of that date, the employer and the contracting union entered into a contract covering the disputed classifications.

The issue in this case is in what circumstance can that unit be an unfair labor practice proceeding, and, of course, here in this present proceeding?

Regardless of how I decide the pending motion, that still is the issue in this case.

The principal objection to the motion is that it's time barred, or, alternatively, that there is no charge to support the expanded nature of the unfair labor practices contemplated by the motion.

70 I disagree with these objections.

In my view, the charge in this case, which is not a pleading – well, I deem the charges in this proceeding broad enough to encompass the proposed amendments to the complaint.

Accordingly, I grant General Counsel's motion to amend the complaint in the manner contemplated by his motion.

Nobody directed themselves to the question I raised as to the scope of the remedy I am authorized to find in this case.

Assume that I were to agree with General Counsel, I still raise the question despite General Counsel's assertion of Section 10-B, to whether in my remedy I would have the authority to find that the inclusion of all professional employees in the unit is in appropriate.

Off the record, please.

(Discussion off the record.)

JUDGE SILBERMAN: Back on the record.

I understand that there is no further evidence to be adduced on behalf of any of the parties.

If that's the case, the parties may indicate that they rest.

MR. SPIVAK: General Counsel rests, your Honor.

71 JUDGE SILBERMAN: Charging Party, do you have any evidence?

MR. SCHWARZ: We have nothing further.

MR. DORN: The union rests.

MR. OHLWEILER: The hospital has nothing further.

JUDGE SILBERMAN: Very well.

As I indicated at the opening of the hearing, I wish to hear oral argument in this case.

Because of the hour, I will recess now until 10:00 o'clock tomorrow morning, at which time the oral argument may be presented.

(Time noted: 4:35 o'clock p.m.)

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*	)	
v.	)	Case No. 76-4088
ST. LUKE'S HOSPITAL CENTER & DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL-CIO	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served by ~~hand~~ (by mail) 3 copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 9th day of July 1976.

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